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TABLE OF CONTENTS

	Page
Jarad B/c Co.,MO&O,FM CP,Garden City NY, MM 84-301,86R-81	1267
R&O, FM B/C STAS. (Ketchum, OK), DA 86-257	1269
Appl of Southern Bell to acq certain exchange prop in State	1271
MO&O, Southwestern Bell Cap. Plan, Cellular, CPE, DA 86-348	1272
Order, Deletes Obsolete Allocation Footnote, G105, DA 86-356	1276
ERRATUM for FCC 86-460, Service List, DA 86-358	1277
MO&O, CellTech Inc., Auth to Const, DPCRTS (Duluth MSA) DA 86-363	1278
MO&O, Wilmington C.T.C., Modify CP, DPCRTS (Wilm., DE), DA 86-365	1280
Erratum, NPRM, released October 30, 1986, (FCC 86-454) DA 86-366	1281
ERRATUM, STANDARD COMM. CORP., MO&O (FCC 86-415), DA 86-367	1282
ERRATUM, K.U.T.E., INC., ORDER (FCC 86-518), DA 86-368	1283
ERRATUM, OVERSIGHT OF B/C RULES ,ORDER, (DA 86-103), DA 86-369	1284
Erratum, FM B/C Stas. (Newberry, MI, et al), DA 86-370	1285
Erratum, Amateur Radio Service (Exam Elements), DA 86-371	1286
Recon, WATS Direct Assignment, CC Dockets 78-72, 80-286, FCC 86-534	1287
R&O, FM B/C STAS. (Twentynine Palms, CA), DA 86-245	1296
R&O, FM B/C STAS. (Clinton, OK), DA 86-246	1297
R&O, FM B/C STAS. (Lone Grove, OK), DA 86-247	1298
R&O, FM B/C STAS. (Alva, OK), DA 86-249	1300
R&O, FM B/C STAS. (Meredith, NH), DA 86-261	1303
R&O, FM B/C STAS. (Sioux Falls, SD), DA 86-262	1304
Staff Rul., Levinson, Reas. acc., WXXI, (Roch. N.Y.), DA 86-372	1305
O&A, AT&T, Intl. Ext. of Lines, DA 86-385	1309
O&A, AT&T, Intl. Ext. of Lines, DA 86-386	1310
Public Notice, BellSouth Corporation Cellular, DA 86-409	1311
R&O Marine Service to vehicles on land, PR Dkt 86-2, FCC 86-540	1312
NOI Comp Lic Credit, Distress Sales, Tax Cert's MM Dkt 86-484	1315
NPRM, FM B/C STAS. (Crestview, FL), DA 86-326	1321
NPRM, FM B/C STAS. (Sherman, TX), DA 86-327	1324
NPRM, FM B/C STAS.(Frostburg, MD),DA 86-328	1326
NPRM, FM B/C STAS. (Bennington, NE), DA 86-329	1328
NPRM, FM B/C STAS. (Lake Lorraine, FL), DA 86-379	1330
FM B/C STAS. (Hilton Head Island, S.C.) DA 86-380	1332
NPRM, FM B/C STAS. (Marietta, OH) DA 86-381	1334
NPRM, FM B/C STAS. (Douglas, AR), DA 86-471	1336
NPRM, TV B/C STAS. (Tamuning, GU), DA 86-383	1338
NPRM, FM B/C STAS. (Marathon, FL) DA 86-390	1340
NPRM, FM B/C STAS. (Greenwood, SC) DA 86-391	1342
NPRM, FM B/C STAS. (Las Cruces and Deming, NM) DA 86-392	1344
NPRM, FM B/C STAS (Roseville, Chico & South Lake Tahoe, CA)	1346
R&O, Elim of FCC Form 903 and Form 905, CC 86-368, FCC 86-547	1349
RKO General KHJ-TV LA Cal 16679 FCC 86-551	1352
NPRM, FM B/C STAS. (Seymour, TX), DA 86-387	1354
NPRM, FM B/C STAS. (Bismarck, ND), DA 86-388	1356
NPRM, FM B/C STAS. (Starkville, MS), DA 86-389	1358
O&A, Comsat Intl., Auth. to Construct, DA 86-399	1360
O&A, Mobilfone, Intl. Ext. of Lines, DA 86-400	1362
M0&0, Revisions of average schedule	1363
MO&O, Fairchild, Intl. Ext. of Lines, DA 86-411	1366
MOO&A, IDB & Satellite Gateway, Intl. Ext. of Lines, DA 86-412	1367

O&A, AT&T, Intl. Ext. of Lines, DA 86-413 1368

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

JARAD BROADCASTING COMPANY, INC.	MM DOCKET NO. 84-301
Garden City, New York	File No. BPH-830325AC
SPECTRON BROADCASTING CORPORATION	MM DOCKET NO. 84-303
Garden City, New York	File No. BPH-830516AK
GARDEN CITY BROADCASTING, INC.	MM DOCKET NO. 84-304
Garden City, New York	File No. BPH-830713AQ
WESTPLEX BROADCASTING COMPANY	MM DOCKET NO. 84-305
Garden City, New York	File No. BPH-830714AE
NORTH SHORE BROADCASTING	MM DOCKET NO. 84-306
Garden City, New York	File No. BPH-830714AF
DECEMBER VENTURES, INC.	MM DOCKET NO. 84-307
Garden City, New York	File No. BPH-830714AG
WINK RADIO, INC.	MM DOCKET NO. 84-308
Garden City, New York	File No. BPH-830714AH
FONIC BROADCASTING CO.	MM DOCKET NO. 84-309
Garden City, New York	File No. BPH-830714AI
MID-ISLAND BROADCASTING, INC.	MM DOCKET NO. 84-310
Garden City, New York	File No. BPH-830714AK
McCOMAS BROADCASTING CORPORATION	MM DOCKET NO. 84-312
Garden City, New York	File No. BPH-830714BF

For a Construction Permit
for a New FM Station

MEMORANDUM OPINION AND ORDER

Adopted: December 16, 1986; Released: December 23, 1986

1. The Review Board has under consideration the petitions for reconsideration filed on November 17, 1986 by Garden City Broadcasting, Inc. (GCB) and WINK Radio, Inc. (WINK) and GCB's motion to enlarge issues filed on the same date. In our *Decision* released October 16, 1986, 1 FCC Rcd 181, 61 RR 2d 389 (Rev. Bd. 1986), we granted the application of Jarad Broadcasting Company, Inc. (Jarad) for permanent authority to construct an FM broadcast station to operate on Channel 224 at Garden City, New York, after finding Jarad's application to be comparatively superior. We shall deny the petitions for reconsideration because they seek merely to reargue matters already addressed and resolved in our *Decision*. That is, insofar as GCB and WINK both attack the Board's analysis of the qualitative enhancement factors supporting Jarad's integration preference, as well as our treatment of WINK's coverage advantage, these matters were fully considered at note 3 and paras. 23, 25, 46, 48-49, 53 of our Decision and will not be revisited. *See WWIZ, Inc.*, 37 FCC 685, 686 (1984), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir.), *cert den.*, 383 U.S. 967 (1966); *see also Clay Television, Inc.*, 98 FCC 2d 510 (Rev. Bd. 1984), *rev. den.*, FCC 85-356, released July 12, 1985.

2. GCB's motion to enlarge issues seeks the specification of a misrepresentation issue against Jarad, and a reopening of the record in this proceeding, on the grounds that Jarad principal Ronald J. Morey misrepresented his claimed status as a member of a minority group (American Indian). We shall deny GCB's motion. First, the materials relied on by GCB to support its motion were available to it at the hearing; yet, it made no effort to seek enlargement of the issues at the time to explore any misrepresentation. Thus, its request now is incurably late. *See Kaye-Smith Enterprises*, 98 FCC 2d 675, 685-6, 56 RR 2d 252, 260 (Rev. Bd. 1984). Second, in our *Decision*, we awarded Jarad no minority enhancement credit because Jarad had failed to meet its burden of proving Mr. Morey's status as an Indian. 1 FCC Rcd at 182-183, 61 RR 2d at 398-399. Specifically, we stated in para. 10 of our *Decision* that "We do not hold that the record establishes that Morey is not an Indian but only that it does not establish that he *is* an Indian." It does not automatically follow, however, that Mr. Morey's claim amounted to a misrepresentation or that he *intended* to mislead the Commission, and GCB has failed to demonstrate *prima facie* that an issue is warranted. No evidence whatever has been offered to show that Mr. Morey does not in fact believe that he is of Indian ancestry. *See Garrett, Andrews and Letizia, Inc.*, 86 FCC 2d 1172, 1175-7, 49 RR 2d 1001, 1004-5 (Rev. Bd. 1981), *aff'd in pertinent part*, 88 FCC 2d 620, 50 RR 2d 802 (1981).

3. ACCORDINGLY, IT IS ORDERED, That the motion to accept late-filed reply filed on December 15, 1986 by WINK Radio, Inc. IS GRANTED, and the consolidated reply IS ACCEPTED; and

4. IT IS FURTHER ORDERED, That the motions for certification and for expedited disposition filed on November 20 and 24, 1986 by Jarad Broadcasting Company, Inc. ARE DISMISSED as moot, and the petitions for reconsideration filed on November 17, 1986 by Garden City Broadcasting, Inc. and WINK Radio, Inc. and the motion to enlarge issues filed on November 17, 1986 by Garden City Broadcasting, Inc. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-14

Amendment of Section 73.202(b) RM-5132
Table of Allotments,
FM Broadcast Stations.
(Ketchum, Oklahoma)

REPORT AND ORDER

(Proceeding Terminated)

Adopted: November 20, 1986 Released: December 23, 1986

By the Acting Chief, Policy and Rules Division:

1. The Commission has before it the *Notice of Proposed Rule Making*, 51 Fed. Reg. 4198, published February 3, 1986, seeking comments on the request of PBL Broadcasting, Inc. ("petitioner") to allocate Channel 298C2 to Ketchum, Oklahoma, as the community's first local FM service. Comments supporting the allocation were filed by the petitioner and by Quinton Burge, Jr. ("Burge"). HCI Acquisition Corp. ("HCI"), licensee of FM Station KAYI (Channel 295), Muskogee, Oklahoma, filed comments and a counterproposal to allocate Channel 250C2 to Ketchum so that it could relocate its transmitter for Station KAYI. Burge and HCI filed reply comments. LeeMay Broadcasting Services, Inc. ("LeeMay") filed untimely reply comments. [1]

2. HCI's counterproposal requests the allocation of Channel 250C2 in lieu of Channel 298C2 at Ketchum, and the substitution of Channel 297A for Channel 296A at Baxter Springs, Kansas, licensed to Station KBLT(FM). These changes are necessary, according to HCI, in order for it to proceed with a planned application seeking to move its transmitter to a "more advantageous" location, thus permitting it to "substantially increase" the population it can serve. HCI states that adoption of its counterproposal would serve the public interest since it would still provide a first local service at Ketchum and the substitution at Baxter Springs would alleviate reception difficulties which it says KBLT experiences within its fringe area due to Station KAYI'S stronger signal.

3. In its reply comments, HCI notes that Channel 250C2 cannot be allocated to Ketchum in compliance with the Commission's minimum distance separation requirements due to a severe short-spacing to Station KZZE, Poteau, Oklahoma. Therefore, it proposes the allocation of Channel 281A to Ketchum as well as the substitution of channels at Baxter Springs. [2]

4. We have carefully reviewed the pleadings before us. In an attempt to satisfy both HCI as well as the stated desire for a higher powered allotment at Ketchum, the staff has performed an engineering study to determine if another Class C2 allotment is available. Unfortunately, we found that Channel 298C2 is the only such channel available for allocation to Ketchum. Channel 281A could be allocated but would have to be considered in conjunction with a request of Don Stubblefield to allocate Channel 281A to Webb City, Missouri (RM-5331) Docket 86-356, as its second local FM service since the communities are located less than the required 105 kilometers apart for co-channel Class A allotments. No other Class A channels are available for allocation to Ketchum.

5. KAYI operates on Channel 295 at Muskogee with facilities of 100 kW of power and an antenna height of 308 meters HAAT. It has filed an application (BPH-860404IB) specifying a new transmitter site 18 kilometers northeast of its current site with facilities of 100 kW power and an antenna height of 540 meters HAAT. As stated in prior Commission decisions, the Commission generally regards an application by an existing station to change its transmitter site as less desirable than a new FM service unless the licensee can demonstrate an overriding public interest justification. This justification would take the form of a comparison, showing what new areas are to be covered from use of its proposed antenna location and facilities and the extent to which these areas are currently unserved or underserved versus the service it currently provides. A change in transmitter site also usually results in a loss of an existing service to some listeners. In the absence of such a showing, the proposed new service would be favored. See *Andalusia, ALabama*, 49 FR 32201, August 13, 1984, and cases cited therein.

6. In *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982), the Commission adopted the following priorities for allocating FM channels:

(1) First aural service

(2) Second fulltime aural service

(3) First local service

(4) Other public interest matters.

(Priorities 2 and 3 given equal weight)

Here, HCI states that use of its proposed transmitter site would "substantially increase" the number of persons it could serve. However, it provides us with no showing that any of this service would be to areas with populations which are currently unserved or underserved. See *Las Vegas, Nevada*, MM Docket 84-655, 51 FR 9453, March 19, 1986. Thus, its proposal could only be considered as fulfilling priority (4). Channel 298C2 at Ketchum, for which two interests in its use have been expressed, would provide the community with its first local service, thus fulfilling priority (3), as well as providing its county, Craig, with only its second aural service. The use of Channel 281A, as suggested by HCI, could provide Ketchum with its first local service. However, it would also require the denial of Webb City's second fulltime service and would not provide the wide area service contemplated by PBL and Burge. We cannot find that a change in HCI's transmitter location, absent a first or second aural service showing, would better serve the public interest than the allocation of a first local wide area channel at Ketchum, and the possible allocation of a second fulltime service at Webb City. Further, while it may be true that Station KBLT at Baxter Springs experiences interference within its fringe reception area due to the stronger Muskogee signal, we note that the stations are not short-spaced. FM channels are allocated on the

basis of minimum distance separation requirements and stations are protected from undue interference based on these distances alone. Thus, while the substitution of channels at Baxter Springs could extend reception of Station KBLT's signal beyond its normally protected contour, we do not find that this is an adequate reason to deny the allocation of Channel 298C2 to Ketchum.

7. Based on the above discussion, we believe that Channel 298C2 should be allocated to Ketchum as the community's first local FM service. Channel 298C2 can be allocated in compliance with the Commission's minimum distance separation and other technical requirements if the transmitter is restricted to an area at least 14.3 kilometers (8.9 miles) northwest. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204 and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 6, 1986, the FM Table of Allotments, Sections of 73.202(b) of the Commission's Rules, IS AMENDED for the Community listed below, to read as follows:

City	Channel No.
Ketchum, Oklahoma	298C2

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. The period for filing applications for this allocation will open on February 9, 1987, and close on March 9, 1987.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Acting Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] LeeMay's reply comments were accompanied by a request for their acceptance. It states that on March 14, 1986, it filed an application to transfer control of PBL's AM Station KVIN, Vinita, Oklahoma, and that this application has the "practical effect" of making LeeMay the party in interest for the Ketchum allotment in lieu of PBL. It states that the pendency of the application caused a delay in the forwarding of HCI's counterproposal to LeeMay. It believes that the public interest would be served by consideration of its untimely reply comments. We disagree. While the transfer of control application was filed prior to the close of the comment period, neither PBL nor LeeMay placed in the record any pleading notifying the Commission and interested parties of a change in the petitioner. Additionally, while there may have been a delay in obtaining a copy of HCI's comments and counterproposal from PBL, there is no reason why LeeMay was dependent upon PBL at all, since the *Notice of Proposed Rule Making* and related pleadings were available from the Commission. We will, therefore, not consider LeeMay's late-filed reply comments.

[2] The Commission's rules do not contemplate the filing of pleadings after the expiration of the comment and reply comment periods. Here, the Commission is in receipt of the following pleadings submitted after the record had closed: (1) "Supplemental Comments" filed by Burge, (2) "Comments of LeeMay Broadcasting Services, Inc. to 'Reply Comments' of HCI Acquisition Corporation" filed by LeeMay; (3) "Motion to Strike" LeeMay's comments to HCI's reply comments, filed by Burge; (4) "Response of LeeMay Broadcasting Services, Inc. to Motion to Strike," filed by LeeMay; and (5) "Reply" to LeeMay's response to Motion to Strike filed by Burge. Accordingly, none of of these pleadings will be considered.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: December 23, 1986

COMMON CARRIER BUREAU

Re: Application of Southern Bell Telephone Company to Acquire Substantially all of the Property of Central Telephone Company of Florida in Starke, Kingsley Lake and Lawtey, Florida; FCC File No. ENF-87-6

Southern Bell Telephone and Telegraph Company has filed for authority to acquire substantially all of the properties and assets used in providing local telephone exchange service in Starke, Kingsley Lake and Lawtey, Florida from Central Telephone Company of Florida (Centel), a communications carrier operating exclusively in the state of Florida. Southern Bell, a BellSouth company, provides telecommunications services in the states of Georgia, Florida, North Carolina and South Carolina. As part of the transaction, Centel will acquire substantially all of the properties used by Southern Bell in connection with its telephone exchange service business in Havana and Graceville, Florida. The proposed transaction will not result in any change in Southern Bell's or Centel's status within the meaning of the Communications Act.

The Application has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return the Application if, upon further examination, it is determined that it is defective and not in conformance with the Commission's Rules, Regulations and Policies. All filings concerning this Application should refer to File No. ENF-87-6.

Comments or petitions may be filed concerning this Application within 30 days of the date of this notice. Final action on this Application will not be taken prior to receipt and consideration of such submissions.

The Application and associated filings will be available for public inspection during regular business hours in Room 6206, 2025 M Street, N.W., Washington, D.C. For further information contact Thomas Wyatt at (202) 632-4887.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SOUTHWESTERN BELL CORPORATION AAD 6-1509

Capitalization Plan for
Cellular Mobile Radio Services
and Customer Premises Equipment
Related to Mobile Radio Services

MEMORANDUM OPINION AND ORDER

Adopted: December 15, 1986 Released: December 22, 1986

By the Chief, Common Carrier Bureau

I. INTRODUCTION

1. Southwestern Bell Corporation (Southwestern Bell) submitted a request to the Chief, Common Carrier Bureau, on August 15, 1986, asking that the authorized capitalization level for its provision of cellular services and customer premises equipment (CPE) related to radio services be increased by $2.024 billion. Of this amount, authorization for $100 million in capitalization is sought pursuant to Section 64.702(d)(4) of the Commission's Rules, 47 C.F.R. § 64.702(d)(4), which requires that Southwestern Bell obtain Commission approval for its plan for capitalizing any separate corporate entity through which CPE is marketed. The remaining increase in authorized capitalization ($1.924 billion) is sought under Section 22.901(d)(3), 47 C.F.R. § 22.901(d)(3), which requires Southwestern Bell to obtain Commission approval of the capitalization plan for the separate subsidiary through which it must offer cellular services. Southwestern Bell's request was placed on public notice on September 4, 1986.[1] No comments or oppositions were filed.[2] The staff of the Common Carrier Bureau requested further information from Southwestern Bell regarding its capitalization plan on October 16, 1986. Southwestern Bell submitted additional information in response to this request on October 24, 1986, October 28, 1986, November 7, 1986, and November 21, 1986.

II. BACKGROUND

2. Southwestern Bell's current approved capitalization for its cellular operations is $142 million.[3] Southwestern Bell now provides cellular services through Southwestern Bell Mobile Systems, Inc. (Mobile Systems), a wholly owned, structurally separate subsidiary of Southwestern Bell. Mobile Systems provides cellular mobile radio services on the "wireline" cellular frequences (as defined in Section 22.902 of the Commission's Rules) within the service area of Southwestern Bell Telephone Company (SWBT), Southwestern Bell's operating telephone company subsidiary. Southwestern Bell now has an authorized capitalization limit of $200 million under Section 64.702(d)(4). This amount was approved for the capitalization of Southwestern Bell Telecommunications, Inc.,[4] the subsidiary established by Southwestern Bell to conform to the Commission's requirements, set out in the *Second Computer Inquiry* [5] and the *BOC Separation Order*,[6] that the Regional Bell Operating Companies furnish enhanced services or customer premises equipment only through structurally separate subsidiaries.

3. The request now before us would fund Southwestern Bell's proposed acquisition of the various radio, paging, microwave, and cellular radio properties currently held by the Metromedia Company.[7] Southwestern Bell states that the new plan also provides capitalization for the continued operations of Mobile Systems.

III. SOUTHWESTERN BELL'S CAPITALIZATION PLAN

4. Southwestern Bell has not as yet determined how the properties to be acquired from Metromedia will be structurally organized. It states that these properties may be merged into the operations of Mobile Systems, or that it may provide cellular radio services using these systems, as well as CPE related to mobile services generally, through one or more other subsidiaries. Southwestern Bell states that any such subsidiary will be structurally separate from SWBT. Through whatever subsidiaries that may be used, Southwestern Bell intends to offer (subject to any approvals which may be necessary) cellular mobile radio services, conventional and specialized mobile radio services, maritime radio services, air-to-ground radio services, point-to-point microwave services, telecommunications voice storage and retrieval services, and the CPE associated with these services. The capitalization plan for which approval is requested, however, involves only the funds attributable to the purchase of the Metromedia subsidiaries providing cellular mobile radio services. These subsidiaries are also engaged in the sale of paging and cellular equipment falling within the definition of CPE. The $100 million for which authorization is sought under Section 64.702 would permit these subsidiaries to continue the sale of this equipment.

5. Of Southwestern Bell's original $2.024 billion capitalization request, $1.65 billion represented the purchase price that was to be paid to Metromedia for its cellular properties. At the time Southwestern Bell submitted its capitalization plan, it intended to purchase Metromedia's cellular properties in Boston, Massachusetts; Worcester, Massachusetts; New York, New York; Philadelphia, Pennsylvania; Washington, D.C.--Baltimore, Maryland; Gary, Indiana; Chicago, Illinois; and Dallas, Texas. On September 11, 1986, Southwestern Bell informed the Commission that the proposed transaction had been modified to exclude the New York, Philadelphia, and Dallas properties. The purchase price was in consequence adjusted downward by $452,926,000, resulting in a total purchase price of $1,197,074,000. Southwestern Bell stated that it does not intend to revise the amount of the capitalization for which it is seeking approval, but that it would not object if the Commission reduces the amount by the decrease in purchase price. A reduction by this amount would result in an increase of $1,471,074,000 authorized under Section 22.901(d)(3) and a total increase in authorized capitalization of $1,571,074,000 for Southwestern Bell's provision of cellular services and related CPE.

6. The difference between the purchase price for the Metromedia properties and the total amount for which Southwestern Bell has requested authorization under Section 22.901 consists of $4 million for preoperational expenses and $370 million to cover estimated capital requirements for related acquisitions and for needs of the business until financial independance is achieved. Of the $100 million for which authorization is sought under Sec. 64.702, $75 million is attributable to paging equipment and $25 million to cellular equipment.

7. Southwestern Bell intends to obtain the funds to consumate the acquisition of the Metromedia cellular systems primarily through the issuance of debt. The debt will be issued by Southwestern Bell Capital Corporation (SBCC), another subsidiary of Southwestern Bell, rather than by the subsidiary which will actually own and operate the cellular systems. SBCC is a wholly-owned subsidiary which Southwestern Bell formed as a vehicle for securing debt financing for all of its subsidiaries except SWBT, the telephone operating company. Immediately after the issuance of the debt by SBCC, SBCC will make a loan in the same amount to the Southwestern Bell subsidiary holding the acquired cellular assets. Southwestern Bell intends to enter into a "support agreement" with SBCC under which Southwestern Bell would guarantee SBCC's obligations by undertaking to provide all funds necessary to meet those obligation's if SBCC itself is unable to do so. The contemplated agreement provides, however, that no lender shall have recourse to or against the stock or assets of SWBT, or any interest of Southwestern Bell in SWBT, in the event that either Southwestern Bell or SBCC defaults on its obligations. Southwestern Bell intends that capital needs above what is required for the acquisition will be met by the infusion of equity by Southwestern Bell, the issuance of additional short-term debt, or funds generated by internal operations. Southwestern Bell estimates that the subsidiaries operating these systems will be able to generate operating capital internally by the end of 1989.

8. Southwestern Bell intends to retire over the next several years the debt generated by the purchase of the Metromedia properties. It intends to do this partially through the use of cash generated by the mobile radio activities and partially through the proceeds of additional equity infusions by the parent company. The source of these additional equity infusions will be earnings retained by Southwestern Bell and may include funds generated through a plan for reinvesting dividends in the company's stock and through the issuance of new equity in conjunction with several employee programs. Southwestern Bell states that it does not anticipate that the increased capitalization of the mobile radio activities will have any effect on the level of its equity infusions into SWBT.[8] It also asserts that the increase in capitalization requested will have no adverse impact on the cost of capital to SWBT.

9. Expenditures which Southwestern Bell has or will incur in connection with the acquisition of Metromedia and related properties are being recorded under a special Custom Work Order. As of July 31, 1986, Southwestern Bell estimated that it had incurred $100,000 in payroll expenses and $1,057,000 in other expenses, making a total of $1,157,000. Southwestern Bell estimates that total expenses incurred prior to acquisition will not exceed $4 million. These expenses will be charged directly to the subsidiary which will receive the acquired assets.

IV. DISCUSSION

10. When reviewing a capitalization plan submitted pursuant to Section 22.901(d)(3), our primary concern is the potential impact of the contemplated transaction on the conventional wireline service ratepayer. Our review focuses on asset transfers, accounting for pre-operational expenses, and compliance with structural separation requirements.[9] When reviewing a plan submitted under Section 64.702, the Commission's concerns are: (1) whether the plan is in compliance with the Commission's structural separation requirements; (2) whether the proposed increase in capitalization threatens either to impair the integrity of the telephone network or to raise unduly the cost of capital for basic service; (3) whether there are adequate indications that at some determinate future date the separate subsidiary will become financially independent of the parent, and (4) whether the accounting treatment of the asset transfers and pre-operational expenses is adequate.[10] After reviewing Southwestern Bell's proposed capitalization plan and other relevent information, we have determined that the proposed increase in capitalization is consistent with our policies, and that the plan should be approved. We will, however, reduce the approved capitalization level by the value of the Metromedia properties which will not now be purchased. Consequently, the amount of increased capitalization approved under Section 22.901(d)(3) is limited to $1,471,074,000, giving a total authorized increase in capitalization of $1,571,074,000.

11. Our assessment in this case was influenced by several factors. First, we note that in 1984 and 1985, the two years since divestiture, SWBT paid dividends to Southwestern Bell in the amounts of $850.8 million and $844.5 million respectively.[11] In 1984, Southwestern Bell paid back into SWBT $132.8 million as additional equity investment; in 1985, this figure was $175.0 million.[12] The difference between what Southwestern Bell received from SWBT and what it found necessary to reinvest in the operating company significantly exceeds the amount that Southwestern Bell plans to invest annually in the cellular operations to be acquired from Metromedia. Moreover, Southwestern Bell paid dividends to its stockholders in 1984 and 1985 of $549.0 million and $597.9 million respectively.[13] These amounts are again well in excess of the annual amounts Southwestern Bell intends to put into the new cellular operations. For the last two years, Southwestern Bell's revenues have exceeded the amount it paid out in dividends plus the amount it infused in SWBT by more than it proposes to spend annually on the properties to be acquired. It is clear, therefore, that Southwestern Bell has revenues sufficient to permit expenditures of the magnitude it contemplates spending on the cellular properties without impinging on the funds it is investing in the telephone operating company, with a substantial margin for error.

12. Second, we note that both Moody's Investors Service and Standard & Poor's reviewed SWBT's creditworthiness in light of Southwestern Bell's proposed acquisition of the Metromedia properties and concluded that SWBT's credit quality will not be affected detrimentally by the transaction. It thus appears that the cost of debt to the telephone operating company will not be increased by the Metromedia acquisition. Southwestern Bell has demonstrated that it will generate adequate revenues to acquire and operate the Metromedia properties while at the same time maintaining current operations.

13. Finally, we find the accounting treatment for asset transfers and pre-operational expenses described by Southwestern Bell to be adequate. Southwestern Bell has stated that it will operate the Metromedia properties through subsidiaries which are structually separate from SWBT. We expect Southwestern Bell to conform fully with the Commission's rules and policies regarding structural separation in its provision of cellular services and CPE.

V. CONCLUSION

14. While Southwestern Bell's proposed acquisitions will involve a substantial outlay of funds, Southwestern Bell's current revenues appear to be more than adequate to finance the acquisition.[14] Southwestern Bell will conduct its operations in accordance with the Commission's structural separations requirements, and we will monitor the relationship between Southwestern Bell and its subsidiaries. The accounting treatment of proposed asset transfers and preoperational expenses is adequate.

VI. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, that the "Motion for Ruling Concerning Capitalization Plan Filing Requirements," submitted by Southwestern Bell Corporation on August 15, 1986, IS DENIED.

16. IT IS FURTHER ORDERED, that the capitalization plan submitted by Southwestern Bell Corporation on August 15, 1986, IS APPROVED to the extent indicated above. The capitalization authorized under Section 22.901(d)(3) of the Commission's Rules is increased by $1,471,074,000, and the capitalization authorized under Section 64.702(d)(4) is increased by $100,000,000.

17. IT IS FURTHER ORDERED, that this Memorandum Opinion and Order IS EFFECTIVE UPON ADOPTION.

FEDERAL COMMUNICATIONS COMMISSION

Albert Halprin
Chief, Common Carrier Bureau

FOOTNOTES

[1] Public Notice, "Southwestern Bell Corporation Files Capitalization Plan for Provision of Cellular Radio Services and Related CPE," Mimeo No. 6734.

[2] On August 15, 1986, at the same time it filed the new capitalization plan, Southwestern Bell also filed a "Motion for Ruling Concerning Capitalization Plan Filing Requirements." In this pleading, Southwestern Bell asks for a ruling that the companies listed in Section 22.901(b) of the Rules, 47 C.F.R. § 22.901(b), (*i.e.*, the Regional Bell Operating Companies) need not file a capitalization plan when acquiring cellular mobile franchises outside areas where their operating telephone subsidiaries provide public landline message telephone service. Southwestern Bell contends that Section 22.901(d)(3) was adopted only to apply to the initial cellular authorizations within areas where their operating telephone subsidiaries provided wireline service. A primary purpose of the Commission's review of capitalization plans pursuant to Section 22.901(d), however, is to permit an assessment of the impact of the proposed asset transfers on the conventional wireline service ratepayer. *See* Capitalization Plan of Pacific Telesis for COMET, Inc., AAD 5-1213, released February 27, 1986 (*COMET Capitalization Order*) at para. 33. The same considerations apply regardless of whether the cellular operation involved is located within or without the affiliated telephone operating company's service area. We will therefore deny Southwestern Bell's Motion.

[3] No specific approval of a capitalization plan has been granted to Southwestern Bell under Section 22.901. We have heretofore concluded that each of the seven Regional Bell Operating Companies is allowed a capitalization level of one-seventh, or $142 million, of the amount approved for AT&T's cellular capitalization plan before the divestiture of AT&T. *See COMET Capitalization Order, supra*, at para. 7.

[4] *See* American Information Technologies, Inc., BellSouth, Bell Atlantic, NYNEX, Pacific Telesis, Southwestern Bell, U S West, Capitalization Plans for the Furnishing of Customer Premises Equipment and Enhanced Services (*BOC Capitalization Plans Order*), 102 FCC 2d 1089 (1985), *jurisdictional holding aff' d sub nom.* North American Telecommunications Ass'n v. FCC, 772 F. 2d 1282 (7th Cir. 1985); and Petition for Approval of Modification of the Permanent Capitalization Plan of Southwestern Bell Telecommunications Inc. to Increase Its Level of Capitalization, Mimeo. No. 5565, released July 5, 1985.

[5] Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980) (*Final Decision*), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff' d sub nom.* Computer and Communication Industry Ass'n v. FCC, 693 F. 2d 198 (D.C. Cir.), *cert. denied*, 461 U.S. 938 (1983).

[6] Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, 95 FCC 2d 1117 (1984), *aff' d sub nom.* Illinois Bell Telephone Company v. FCC, 740 F. 2d 465 (7th Cir. 1984), *aff' d on recon.*, FCC 84-252, 49 Fed. Reg. 26056 (1984), *recon. aff' d sub nom.* North American Telecommunications Ass'n v. FCC, 772 F. 2d 1282 (7th Cir. 1985).

[7] Applications for Commission approval of the transfer of control of the various cellular systems involved (File Nos. 29700 through 29702-CL-TC-1-86) were granted by the Chief, Common Carrier Bureau, on December 11, 1986.

[8] SWBT pays out all of its earnings in dividends to Southwestern Bell. Southwestern Bell then makes such equity infusions into SWBT as may be necessary.

[9] See *COMET Capitalization Order, supra*, note 2 at para. 33.

[10] Id. at para. 32.

[11] Securities and Exchange Commission Form 10-K, submitted by SWBT for fiscal year ending December 31, 1986, p. 20.

[12] Id.

[13] Annual Reports of Southwestern Bell Corporation for 1984 and 1985.

[14] In its September 25, 1986 "Petition to Deny" the transfer of control applications referenced in Note 7 supra, LIN Cellular Communications Corp. (LIN) generally asserts that Southwestern Bell's agreement with Metromedia "contemplates substantial guarantees of repayment that appear to violate" the separate subsidiary requirements of Section 22.901(c). Petition to Deny at pp. 18-19. In support of this position, LIN refers to the notes which Southwestern Bell will issue and states that "Southwestern Bell must provide reasonable assurances, either through guarantees or agreements to make further contribu-

tions to the subsidiary, to ensure the creditworthiness of the notes." LIN finds the "no recourse" provision of the agreement (para. 7, supra) to be "puzzling," asserting that 85% of Southwestern Bell's revenues are derived from SBTC. Accordingly, it concludes that Southwestern Bell has failed to demonstrate that it can complete the purchase without recourse to funds necessary to operate SBTC. We find LIN's concerns to be without merit. We have reviewed the agreement and find, as Southwestern Bell asserts, that the terms do not violate the separate subsidiary requirements. Creditors will have no recourse to the stock or assets of SBTC, and we have concluded herein that Southwestern Bell has funds available (even after the payment of dividends and equity infusions into SBTC) to cover the annual debt payments. See paras. 10-11, supra. LIN's implication that Southwestern Bell will ignore the "no recourse" provisions simply because it depends on SBTC to provide a significant part of its revenues is speculation, and does not rely on a rational analysis of the financing of the transaction.

Before the
Federal Communications Commission
Washington, D.C. 20554

Amendment of Part 2 to delete
footnote G105 from the Table of
Frequency Allocations.

ORDER

Adopted: December 3, 1986 Released: December 24, 1986

By the Managing Director:

1. Government footnote, G105, to the Table of Frequency Allocations, Section 2.106 of the Rules, provided an allocation for radio altimeter operations in the band 420-460 MHz through January 1, 1985. It further restricted such operations to the military services. Since that date has passed, the footnote is obsolete. Therefore, we are removing the footnote from the Table.

2. This action is considered to be editorial in nature. Accordingly, IT IS ORDERED, That pursuant to authority of 47 U.S.C. Sections 154(i), 302, and 303, and pursuant to Section 0.231(d) of the Commission's Rules, Part 2 of the Commission's Rules and Regulations IS AMENDED as shown below. This amendment becomes EFFECTIVE January 1, 1987.

RULE CHANGES

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2 - FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS.

The authority citations in Part 2 continue to read:

Authority: 47 U.S.C. 154, 303.

Section 2.106 is amended by deleting footnote designator G105 at column 4 in the bands from 420-460 MHz and by deleting the text of footnote G105 from the list of footnotes following the Table of Frequency Allocations.

FEDERAL COMMUNICATIONS COMMISSION

Alan R. McKie
Deputy Managing Director

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket 85-124

In the Matter of

Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service

ERRATUM

Released: December 23, 1986

Attachment A to the Supplemental Notice of Proposed Rulemaking, FCC 86-460, released December 9, 1986, was inadvertently omitted. It appears below.

CC Docket 85-124 Closed Service List

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(202) 632-6600

Commissioner James H. Quello
Federal Communications Commission
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Commissioner Marvin R. Weatherly
Alaska Public Utilities Commission
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Ms. Larraine Plaga
Alaska Public Utilities Commission
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Chairman Louise McCarren
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Mr. Cary B. Hinton
Department of Business Regulation
Utah Division of Public Utilities
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Salt Lake City, Utah 84110
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FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

CELLULAR TECHNOLOGY, INC. TELEPHONE COMPANY — File No. 22397-CL-P-141-A-86

For authority to construct and operate a system in Domestic Cellular Radio Telecommunications Service for Duluth, Minnesota/Wisconsin Metropolitan Statistical Area (MSA)

MEMORANDUM OPINION AND ORDER

Adopted December 16, 1986; Released December 23, 1986

By the Common Carrier Bureau:

1. Northern Illinois Cellular Communications, Inc. (Northern) filed a petition to deny the application of Cellular Technology, Inc. (CTI), the tentative non-wireline selectee in the lottery held on May 5, 1986 for the Duluth, Minnesota/Wisconsin MSA. Responsive pleadings were filed.

2. Northern alleges that CTI is financially disqualified. Under the terms of the loan from the First National Bank at Lubbock, CTI's directors are required to unconditionally guarantee the loan, however, Northern alleges that the directors have not done so. Without this security, it contends this commitment is defective. Northern avers that CTI has not properly accepted the bank's offer nor has demonstrated it paid a loan commitment fee. Without this bank loan, Northern contends CTI's assets are insufficient to finance its proposal and points out that CTI did not submit a current balance sheet. CTI asserts that the bank loan was accepted by its president, on behalf of the board of the directors, and that it paid the loan commitment fee. Moreover, it submitted an amendment, which it contends would immediately rectify these and any other alleged problem with its financial qualifications.

3. Additionally, Northern contends the application is technically defective. Northern states that the application proposes 100 watts for Cell A, which exceeds the limits provided by Section 22.905 of the Rules. Also, Northern asserts that CTI did not use a polar diagram for Cell D, which resulted in wrong data listed for antenna gain and contours. The entire system, according to Northern, does not cover as much of the CGSA as represented in CTI's engineering prospectus. Based upon these errors, Northern contends the application must be denied. CTI contends that Northern fails to recognize that it proposed a directional antenna for Cell A. Based upon its engineer's analysis, CTI asserts that "the directional antenna pattern substantially reduces its effective radiated power from 100 watts to as low as 2.5 watts along certain of the cell's eight principal radials" and "lies well within the Section 22.905 height-power limits". Likewise, CTI maintains Cell D complies with the rules since this cell has a side mounted omnidirectional antenna.

DISCUSSION

4. Financial Qualifications. Upon review of the application, we conclude that CTI's application satisfies our firm financial requirements of Section 22.917(b) of the Rules. CTI's July 1 amendment, as clarified by its August 13 amendment and pleadings filed, establish that CTI accepted the bank's loan commitment and that its corporate directors unconditionally guaranteed the loan.[1] Based upon CTI's amendment representing that its Certified Public Accountant considered its balance sheet dated May 15 as substantially correct as of July 1, we find that this balance sheet is acceptable under our rules. Therefore, we conclude that CTI is financially qualified.

5. Technical Qualifications. We conclude that CTI is in technical compliance with the rules, except for two radials for Cell A. With reference to these radials, CTI is required to reduce its effective radiated power along its 270 and 315 degree radials to 67 watts. Concerning Northern's allegations relating to Cell D, we find that CTI filed a polar diagram (Exhibit 10-p.2) and appropriate data for this site. Based upon CTI's technical showing, we conclude that it is technically qualified.

ORDERING PARAGRAPHS

6. Accordingly, IT IS ORDERED That the Petition to Deny filed by Northern Illinois Cellular Communications, Inc. IS DENIED.

7. IT IS FURTHER ORDERED That the application of Cellular Technology, Inc., File No. 22397-CL-P-141-A-86 IS GRANTED, subject to the provisions in paragraph 5, and will be effective when the amendment is filed. Furthermore, the amendment must be filed within 30 days of the release of this Order or the application will be dismissed. Construction is not authorized at any location for which a final Federal Aviation Administration determination has not been submitted to the Commission and any required marking and lighting specifications have not been issued by the Commission.

8. IT IS FURTHER ORDERED, That all other non-wireline applications in this market ARE HEREBY DISMISSED, subject to CTI's filing of its amendment.

9. This Order is issued under Section 0.291 of the Commission's Rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Rules may be filed within 30 days of the date of public notice of this Order. *See* Section 1.4(b)(2) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTE

[1] We observe that 15 of the 16 directors submitted signatures guaranteeing the bank loan. The remaining director represented that because of a domestic suit he was advised by counsel that he had to request authority by a court to sign this guarantee. CTI indicated this director requested that authority and is awaiting the court's disposition. CTI further indicated it paid the bank's commitment fee and offered to submit its cancelled check to the staff to verify this payment. We accept these representations and considered them in our decision to conclude CTI is financially qualified.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

WILMINGTON CELLULAR TELEPHONE COMPANY — File No. 00009-CL-MP-87

and

LONG BRANCH CELLULAR TELEPHONE COMPANY — File No. 29738-CL-MP-86
File No. 29739-CL-MP-86

For authority to modify their construction permits in the Domestic Public Cellular Radio Telecommunications Service on Frequency Block A in the Wilmington, Delaware and Long Branch, New Jersey Metropolitan Statistical Areas

MEMORANDUM OPINION AND ORDER

Adopted December 17, 1986; Released December 23, 1986

By The Common Carrier Bureau:

1. On September 29, 1986, Long Branch Cellular Telephone Company (LBC) filed its referenced applications to modify cells in three townships. On October 8, 1986, Wilmington Cellular Telephone Company (WC) filed its referenced application to modify one cell. All of the referenced applications were deemed applications for changes in the authorized CGSA under Section 22.903(d) of the rules. Bell Atlantic Mobile Systems of Philadelphia, Inc. (BAMS) filed comments regarding all three applications. LBC and WC (collectively "the applicants") filed replies to the comments.

2. In its comments BAMS claims that the applicants failed to file information required by Sections 22.913 and 22.917 when they filed their applications.[1] The applicants claim that "BAMS' Comments are a blatant abuse of Commission processes designed soley to delay grant" of the captioned applications. They further point out that the Commission has not routinely required the filing of the information required by Sections 22.913 and 22.917 of the rules when the application is not truly an extension of the CGSA and when that information is already on file with the Commission as the result of the filing of the underlying application.

3. We agree with the applicants. Section 22.903(d) of the rules states that "An applicant whose proposal would extend the 39 dbu contour . . . outside of its currently authorized CGSA will be deemed to be applying for a change in its CGSA." Section 22.913 requires that applications for modified facilities will include eleven specific exhibits, including those referred to by BAMS in its Comments. It has not been the practice of the Mobile Services Division staff, however, to require that these eleven exhibits be included with applications which were treated as major amendments under Section 22.903(d) when that information was already on file with the Commission and would remain substantially unchanged, as is the case in the captioned applications. To have required applicants, including BAMS, who have filed similar applications in the past to file Section 22.913 or Section 22.917 information would have been placing an unnecessary burden on those applicants.

4. BAMs' comments do not merit serious consideration. Furthermore, on December 8, 1986 the applicants submitted amendments to the captioned applications which brings those applications into full compliance with the Commission's rules.

5. In light of the above facts, IT IS ORDERED, That the Comments filed by Bell Atlantic Mobile Systems regarding the referenced applications are hereby DISMISSED AS MOOT.

6. IT IS FURTHER ORDERED, That the applications of Wilmington Cellular Telephone Company (File No. 00009-CL-MP-87) and Long Branch Cellular Telephone Company (File No. 29738-CL-MP-86 and File No. 29739-CL-MP-86) ARE GRANTED.

7. This order is issued under Section 0.291 of the Commission's rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order. *See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTE

[1] Specifically, BAMS claims that the applicants failed to include the following, required by Section 22.913: 1) a reduced CGSA map; 2) an exhibit containing the engineering data and calculations used to derive the service contours shown; 3) an exhibit stating how the proposal complies with the Commission's cellular design concepts and indicating the proposed method for coordinated expansion of the system in response to changing service demands; 4) an exhibit indicating the basis for determining if sufficient congestion exists to warrant cell-splitting; and 5) an exhibit indicating the frequency plan to be used if the application is granted. Additionally, BAMS claims that the applicants failed to file the financial showing required by Section 22.917 for all applications for modified facilities.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-406

In re

Amendment of Sections 73.1125
and 73.1130 of the Commission's
Rules, the Main Studio and Program
Origination Rules for Radio and
Television Broadcast Stations

ERRATUM

Released: December 22, 1986

The Notice of Proposed Rule Making, FCC 86-454, released October 30, 1986, 1 FCC Record 536, in the above-entitled matter is corrected to include "Commissioner Quello issuing a separate statement" after the phrase BY THE COMMISSION:

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

October 16, 1986

SEPARATE STATEMENT
BY COMMISSIONER JAMES H. QUELLO

Re: Notice of Proposed Rule Making to Amend Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations.

I am in agreement with the Commission's action today in issuing a Notice of Proposed Rule Making to determine whether our main studio and program origination rules are outdated. It is true that the radio and television marketplace have dramatically changed since the time these rules were adopted and that new technology calls their validity into question. At the same time, however, I wish to emphasize that my support for launching this rule making should in no way be construed as signaling an effort to erode what I believe to be a licensee's obligation to serve the needs and interests of the community to which it is licensed. Indeed, as I consistently emphasized in our must-carry proceeding, a licensee's local obligation is a very substantial government interest and, indeed, as the court of appeals has held, is a statutory obligation of every licensee. See *UCC v.* FCC, 707 F.2d 1413, 1429 n. 46 (D.C. Cir. 1983).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Application for Review of
Monetary Forfeiture Assessed Against
Standard Communications Corporation

ERRATUM

Released: December 23, 1986

The Memorandum Opinion and Order (FCC 86-415, 1 FCC Rcd 358 (1986)), released October 31, 1986, in the above captioned matter is corrected by adding the following footnotes.

[1] 47 U.S.C. Sec. 503(b)(2) ("In determining the amount of . . . a forfeiture . . . the Commission . . . shall take into account the nature, circumstances, extent, and gravity of the prohibited acts . . . and . . . the degree of culpability, any history of prior offenses . . . and such other matters as justice may require.").

[2] Sec. 302(b) of the Act specifies that "No person shall . . . import . . . devices which fail to comply with regulations promulgated pursuant to this section." 47 U.S.C. Sec. 302(b).

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

K.U.T.E., INC.

For Construction Permit
and Waiver of 47 C.F.R. Sec. 73.211(c)
Station KUTE(FM), File No. BPH-851104II
Glendale, California

ERRATUM

Released: December 22, 1986

The Order (FCC 86-518) released December 2, 1986, in the above captioned matter is corrected by adding "Commissioner Quello concurring in the result" after the phrase "By the Commission."

FEDERAL COMMUNICATIONS COMMISSIONS

William J. Tricarico,
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Oversight of the Radio
and TV Broadcast Rules

ERRATUM

Released: December 22, 1986

The Appendix to the Order (DA 86-103), released November 26, 1986, in the above captioned proceeding is corrected by clarifying Sec. 73.606 of the Commission's rules.

Sec. 73.606 Table of Allotments

(a) *General.* The following table of allotments contains the channels designated for the listed communities in the United States, its Territories, and possessions. Channels designated with an asterisk are assigned for use by noncommercial educational broadcast stations only. A station on a channel identified by a plus or minus mark is required to operate with its carrier frequencies offset 10 kHz above or below, respectively, the normal carrier frequencies.

* * * * *

(b) *Table of Allotments.*

* * * * *

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment to Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Newberry, Michigan) — MM Docket No. 86-447, RM-5427

In the Matter of

Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Centerville, Utah) — MM Docket No. 86-448, RM-5410

In the Matter of

Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Thomaston, Maine) — MM Docket No. 86-449, RM-5479

In the Matter of

Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Monticello and Logansport, Indiana — MM Docket No. 86-450, RM-5382

In the Matter of

Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Taft, Oklahoma) — MM Docket No. 86-451, RM-5461

ERRATUM

Released: December 23, 1986

On December 15, 1986, the Commission, by its Mass Media Bureau, released Notices of Proposed Rulemaking in the captioned proceedings (DA Nos. 86-288, 86-289, 86-290, 86-291, 86-292 respectively). The reply comment date was misstated in each document: The correct reply comment date is March 2, 1987.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 86-63

In the Matter of

Amendment of Part 97 of the Commission's Rules to Provide for Examination Credit for Written Examination Elements above the Novice Class. RM-4991

ERRATUM

Released: December 23, 1986

On November 7, 1986, the Commission released a Report and Order in the captioned proceeding (FCC 86-429). The effective date of that action was incorrect. The effective date is contingent upon OMB approval of the changes to FCC Form 610. A public notice will be issued announcing the actual date upon such approval.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MTS and WATS Market Structure	CC Docket No. 78-72
	CC Docket No. 80-286
Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board	

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION AND ORDER INVITING COMMENTS

Adopted: December 2, 1986 Released: December 24,1986

By the Commission: Commissioner Dennis concurring and issuing a statement at a later date.

I. Introduction

1. On January 7, 1986, we issued the *WATS Direct Assignment Order*,[1] in which we adopted the Joint Board's recommendation that we amend the separations rules to provide for the direct assignment of the costs of "closed-end" WATS access lines to the interstate or intrastate jurisdiction. Two interexchange carriers other than AT&T (other common carriers or "OCCs") filed petitions that are described as petitions for clarification and/or reconsideration of this Order. After reviewing the petitions and the pleadings submitted in response thereto, we reaffirm our decision to require the direct assignment of the costs of access lines that have been described as WATS access lines in the *Separations Manual*. However, in response to concerns and ambiguities raised in the petitions, we are establishing a pleading cycle in this Order for submitting proposals and comments on whether we should make any changes in the separations treatment of special access lines, including WATS access lines, that carry significant amounts of both interstate and intrastate traffic.

II. Background

2. Before the *WATS Direct Assignment Order*, the separations rules included the non-traffic-sensitive (NTS) costs of closed-end WATS access lines[2] in the same category as the NTS costs of ordinary common lines. The total NTS costs of common lines, intrastate WATS lines, and interstate WATS lines were apportioned between the state and federal jurisdictions according to a specified allocation factor.[3] In 1983 the Joint Board first recommended a change in the separations treatment of WATS access lines to provide for the direct assignment of their costs to the federal or state jurisdiction in the same manner as the costs of the dedicated facilities used with private line services.[4] Although we agreed with the Joint Board in principle that direct assignment of the costs of these lines was appropriate, we deferred any changes in the separations rules pending further study by the Joint Board of the impact of the recommended changes on interexchange competition.[5] In 1985 the Joint Board again recommended that WATS access line costs be directly assigned to the appropriate jurisdiction.[6] It stated that direct assignment of WATS access lines is logical because these lines are dedicated to either intrastate or interstate WATS service, and noted that the majority of commenting parties endorsed direct assignment as consistent with the principle of actual use.[7] In the *WATS Direct Assignment Order*, we adopted the Joint Board recommendation, amending the Part 67 jurisdictional separations rules to provide that direct assignment take effect June 1, 1986.[8]

III. Reconsideration Pleadings

A. Petitions for Clarification and/or Reconsideration

3. Two OCCs, MCI Telecommunications Corp. and Argo Communications Corp., filed Petitions for Clarification and/or Reconsideration of the *WATS Direct Assignment Order*. MCI attacks the Order on a number of fronts. It alleges that WATS access lines are not used solely for interstate or intrastate purposes, and that interstate carriers and other access customers of AT&T's WATS services often use AT&T's interstate WATS services to complete intrastate telephone calls (and vice versa).[9] MCI maintains that interstate switched access tariffs do not require that WATS access lines be used only for interstate calling and that even if they did, the restrictions would be of no effect since there is no technical limitation on WATS access lines prohibiting them from carrying intrastate calls.[10]

4. MCI supports its argument with some examples. First, it claims that an OCC may use AT&T's interstate 800 service to carry an originating call from State A to the OCC's switch in State B. The OCC can then, and allegedly often does, route the call back to the originating State A using AT&T's interstate OUTWATS service (by placing a call from its switch in State B to State A).[11] MCI argues that this intrastate use of interstate WATS services is permissible because of our policies promoting resale and competition. Second, MCI asserts that intrastate 800 service can be used in a similar fashion as one leg in an interstate call: that is, an OCC can use an intrastate 800 service to carry an end user's call in State A to the OCC's switch in the same state, and from that point, the end user's call can be routed to a terminating point in another state –possibly using AT&T's interstate OUTWATS service. Third, MCI claims that an OCC can, and often does, use intrastate OUTWATS services to complete interstate telephone calls, and alleges this Commission has expressly required LECs and AT&T to allow this interstate use of intrastate WATS services.[12]

5. Additionally, MCI argues that we are not justified in treating WATS access lines differently from common lines (i.e., ordinary subscriber lines), both because traffic over these WATS access lines uses the same common switching and trunking used by any other originating or terminating switched access traffic, and because switched WATS access is "like" any other form of switched access to an interexchange carrier (IXC) or IXC toll customer.[13] Moreover, MCI argues that our decision to directly assign the costs of WATS access lines is inconsistent with our decision to freeze the allocation factor for subscriber lines.[14] In MCI's view, to the extent that the decision to directly assign WATS lines is based on a belief that the service is

used exclusively for either interstate or intrastate calling, it cannot be reconciled with this Commission's abandonment of a relative use allocation factor for common lines.[15] MCI contends further that the costs of special access lines, which are directly assigned, are allocated not on the basis of jurisdictional use (because these lines carry mixed traffic), but on the basis of the jurisdiction of the tariff from which the service is purchased.[16]

6. Based on these assertions, MCI argues that this Commission must either clearly set forth concrete and factually accurate features that differentiate common lines and WATS access lines in order to escape a serious discrimination problem, or apply consistent allocation mechanisms to all NTS plant.[17] It suggests as alternative allocation factors: (1) frozen SPF, or (2) the direct assignment of costs to either the interstate or the intrastate jurisdiction based on either predominant use or the jurisdiction of the tariff from which the service is purchased.[18]

7. Argo, in its Petition, addresses only the statement in the *WATS Direct Assignment Order* that WATS access lines are used exclusively for either intrastate or interstate toll service. It alleges that this statement could be incorrectly viewed as expressing a Commission policy to prohibit the use of dedicated access lines for *both* interstate and intrastate WATS-like services,[19] a result that would, in its view, be contrary to the public interest and lead to unnecessary duplication of facilities and substantially higher costs for end users.[20] It asks this Commission either to reconsider this statement or clarify that the statement does not apply to facilities used by OCCs to provide WATS-like services.[21]

B. Oppositions and Replies

8. A number of OCCs support the reconsideration petitions. ALC agrees with MCI that this Commission's decision to directly assign the costs of WATS access lines is based on the false premise of jurisdictional purity.[22] It notes that its own WATS-like services and its resold AT&T WATS and 800 services are not provided in a jurisdictionally pure manner.[23] Furthermore, in support of Argo's petition, ALC contends that jurisdictional restrictions on facilities will not serve the public interest if they limit or encumber the ability of consumers and carriers in today's competitive environment to utilize the access lines for all traffic, irrespective of jurisdiction.[24] Separate access lines are offered for intrastate and interstate WATS calling, according to ALC, only as a result of product design decisions made by AT&T.[25] GTE Sprint also supports MCI's petition,[26] arguing that this Commission must, at the very least, clarify and further delineate the specific WATS or WATS-type offerings qualifying for direct assignment.[27] It also supports MCI's suggestion that there must be parity of treatment for all access lines.[28]

9. AT&T, the BOCs, and user groups uniformly reject MCI's arguments. First, a number of these parties claim that MCI's petition is procedurally defective because it presents no arguments or information that MCI has not previously presented to this Commission in various pleadings before adoption of the *WATS Direct Assignment Order*.[29] They also dispute MCI's contention that interstate WATS access lines can carry both interstate and intrastate traffic.[30] AT&T maintains that WATS closed-end access, as provided to IXCs under tariff, is either interstate or intrastate, but not both.[31] It further notes that the occasional cross-jurisdictional use described by MCI is achieved through customer-controlled facilities that AT&T can neither monitor nor control and that this use does not change the essential jurisdictional character of the principal carrier's facilities.[32]

10. NYNEX dismisses MCI's examples of cross-jurisdictional use as purely hypothetical. It claims that MCI's first example, in which an IXC uses AT&T's 800 Service and OUTWATS to complete intrastate calls, appears as two distinct interstate calls to the LECs. According to NYNEX, MCI's second and third examples, in which intrastate WATS is used to originate or terminate interstate calls, proves only that an IXC can manipulate the access tariffs to evade this Commission's intent. The IXC would misreport the nature of the call to the LEC and would evade payment of access charges necessary to support the costs of interstate use of the local network. NYNEX also contends that use of intrastate WATS access lines to complete interstate calls is not sanctioned by this Commission's orders prohibiting resale restrictions, for these orders were intended only to inhibit price discrimination by promoting competition for interexchange services. According to NYNEX, we allowed use of intrastate WATS to terminate interstate calls only until the development of access tariffs; with the development of these tariffs, this use is no longer appropriate.[33] In reply MCI rejects NYNEX's contentions that access services or tariffs preempt the use of intrastate WATS services to carry interstate telephone calls.[34]

11. A number of parties argue that, contrary to MCI's assertion, common lines and WATS access lines are not identical.[35] For example, Southwestern Bell argues that MCI ignores the clear distinction between common lines, which provide unrestricted originating and terminating local, intrastate, and interstate access, and WATS lines, which provide restricted, one-way access.[36] The costs of WATS access lines should be directly assigned, according to those opposing MCI's petition, because these lines are just like the dedicated access lines used to access OCC "WATS-like" services, the costs of which are directly assigned rather than allocated between jurisdictions.[37]

12. A number of commenters disagree with MCI's assertion that the direct assignment of WATS access lines is inconsistent with our decision freezing SPF. Bell Atlantic finds nothing inconsistent in these actions. It says that the order freezing SPF applies only to switched access services carrying both interstate and intrastate traffic.[38] NYNEX faults MCI's suggestion that the costs of all lines be directly assigned based on the tariff from which the access service is ordered, claiming that such an approach would legitimize "tariff shopping" and result in rate increases.[39]

13. In opposing Argo's Petition, AT&T maintains that Argo's claim concerns only the provision of OCC WATS-like services and provides no basis for reconsideration of the *WATS Direct Assignment Order*.[40]

IV. Discussion

14. Although our orders and rules have sometimes used the names of particular AT&T services to describe generic categories of service, the 1971 *Separations Manual* provisions that included WATS access lines in the subscriber line and exchange trunk separations categories[41] referred only to access lines used for particular AT&T services that were being offered in a jurisdictionally pure manner.[42] With the advent of interexchange competition, OCCs began offering their own alternatives to WATS, sometimes

described as WATS-like, WATS-type, or WATS-equivalent services. The access lines employed in these services, configured differently from the access lines used to provide AT&T's WATS services,[43] were not offered in a jurisdictionally pure manner.[44] These access lines have apparently always been treated as special access lines for separations purposes and therefore have always been directly assigned. In the *WATS Direct Assignment Order*, we merely changed the separations classification of the access lines used by AT&T, and also by local exchange carriers,[45] in providing WATS that was limited to either interstate or intrastate calling. Our statement that WATS access lines are used exclusively for interstate or intrastate services implied nothing about the use made by Argo or any OCC of special access lines obtained to provide WATS-like services,[46] so Argo's requested clarification is unnecessary.

15. We also reject all of the bases presented by MCI for seeking reconsideration of the *WATS Direct Assignment Order*. MCI apparently does not fault our decision to directly assign WATS access line costs, but only the jurisdictional purity rationale on which it is premised. As a threshold matter, we note that the separations process is not an exact science: "the difficulty in making an exact appportionment of the property is apparent, and extreme nicety is not required. . "[47] Applying this standard, we do not believe that the configurations described by MCI in its petition undermine the decision or the rationale in the *WATS Direct Assignment Order*.

16. MCI vaguely asserts that through these configurations AT&T's interstate WATS is "often" used to place and complete intrastate calls and AT&T's intrastate WATS is "often" used to complete interstate calls, but it has given us no indication of the actual extent of this use. In 1985, there were approximately one million interstate WATS access lines, which carried an estimated 25 billion minutes. The services provided over all of these lines were subject to blocking and screening restrictions to ensure they were jurisdictionally dedicated.[48] In light of the fact that WATS has been offered only in a jurisdictionally restricted manner and that this service has been heavily used by both end users and resellers for calls that involve no cross-jurisdictional use, we find it highly likely that the overwhelming majority of interstate WATS lines carry only interstate calls, and that intrastate WATS lines are similarly limited to intrastate calling. MCI has presented no evidence to the contrary. Furthermore, we believe that, with LATA-wide terminating access now available and with some OCCs, including MCI, soon to be offering its own 800 service, the configurations described by MCI will be even less frequently employed in the future than they have been in the past.[49] We therefore decline to revise our decision to directly assign WATS access lines based on what appears to be, at most, relatively minimal cross-jurisdictional use.[50]

17. Additionally, we reject MCI's contention that this Commission must treat the costs of WATS access lines and common lines the same for separations purposes.[51] Use of common traffic-sensitive plant (switching and transport facilities) by WATS and MTS has no bearing on the separations treatment of the NTS plant (the access lines) used with each service. When MTS and WATS use the same plant, the costs of that plant are allocated and recovered on the same basis.[52] Furthermore, it is not inconsistent for us to allow for the direct assignment of the costs of some NTS plant, and to separate the costs of other NTS plant on the basis of frozen SPF or some other allocation factor. A basic principle of separations is that costs should be directly assigned wherever possible.[53] In this order, we affirm the application of direct assignment to plant used solely for one type of traffic, intrastate or interstate.

V. Federal/State Joint Board Proceeding on the Separations Treatment of Mixed-Use Special Access Lines

18. Although the petitions and other reconsiderations pleadings do not present arguments or information that would warrant any reexamination of our decision to directly assign WATS access line costs, these petitions and pleadings have focused our attention on a possible anomaly in our separations rules. Some special access lines, such as those used by OCCs like Argo in their WATS-like services, carry significant amounts of both interstate and intrastate traffic. Yet, a literal interpretation of the current separations rules could lead to the conclusion that there is no separations rule for these "mixed-use" lines.[54] In revising the separations rules, neither this Commission nor the Docket 80-286 Joint Board considered the existence of significant amounts of mixed traffic on special access lines and the impact of this traffic on the separations treatment of these lines. Accordingly, we have decided that the question of the proper separations treatment of such mixed-use special access lines, including access lines used with any WATS-like services offered by AT&T or any OCC,[55] should be referred to the Docket 80-286 Joint Board for further examination.

19. We are establishing a pleading cycle in this Order for proposals and comments on various options for the separations treatment of all special access lines that carry significant amounts of both interstate and intrastate traffic. We recognize that jurisdictional purity is sufficient, but not necessary, for direct assignment. The direct assignment of the costs of many or all special access lines that carry mixed traffic may still be justified. Direct assignment might, for example, be applied only to those mixed-use lines on which it is impossible or impracticable to detect the nature of the traffic and therefore to allocate the costs between the jurisdictions based in some way on relative jurisdictional use. However, direct assignment may not be appropriate for special access lines on which traffic is jurisdictionally separable and measurable, particularly those mixed-use lines that terminate on a LEC switch. We seek specific suggestions on alternative allocation factors we could use for these measurable, mixed-use lines, including those based on measurement–actual or estimated– leading to an allocation based on relative or predominant jurisdictional use. Alternatively, a jurisdictional cost allocation on the basis of some alternative allocation mechanism, such as a fixed allocation factor analogous to the 25% factor being phased in for the allocation of the NTS costs of ordinary subscriber lines, may be appropriate for all mixed-use special access lines. As yet another alternative, we could continue to treat all special access lines carrying mixed traffic the same as jurisdictionally pure special access lines by directly assigning their costs. We also invite comments on the associated cost and implementation problems of any proposals.

20. All participants are, of course, encouraged to consider and describe the relationship of any proposed separations formula to the goals of the Communications Act and the goals of our access charge proceeding. We

note that the traditional direct assignment of special access lines has resulted in pricing methods that have generally satisfied the needs of carriers and their customers and have promoted economic efficiency in the provision of telecommunications services. Proponents of alternative separations methods should endeavor to demonstrate that their proposals will produce the same results.[56]

VI. Ordering Clauses

21. Accordingly, IT IS HEREBY ORDERED, That, pursuant to 47 U.S.C. §§ 154(i) and (j), 201, 202, 203, 205, 218, and 403, the petition for reconsideration and/or clarification filed by MCI IS DENIED.

22. IT IS FURTHER ORDERED, That the petition for clarification or reconsideration filed by Argo IS DENIED.

23. IT IS FURTHER ORDERED, That the petition for waiver of length of pleading restriction filed by MCI IS GRANTED.

24. IT IS FURTHER ORDERED, That comments regarding the proper separations treatment of mixed-use special access lines ARE TO BE FILED with the Secretary, Federal Communications Commission no later than February 20, 1987. Replies are to be filed no later than March 20, 1987.[57] All comments and reply comments are to be served on the Docket 80-286 Joint Board members and staff listed in Attachment A.

25. IT IS FURTHER ORDERED, That the Docket 80-286 Federal-State Joint Board is to review the comments and prepare recommendations to this Commission.[58]

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FOOTNOTES

[1] Amendment of Part 67, Decision and Order, CC Docket Nos. 78-72 and 80-286, FCC 85-655 (released Jan. 7, 1986).

[2] A "WATS access line" is a dedicated access line from the customer's premises to the local exchange carrier's WATS serving office. This line is found at the "closed end" of the WATS service (the originating end of OUTWATS and the terminating end of INWATS, or "800 service"). The WATS serving office may or may not be the same central office that provides local exchange service to the WATS customer. *See generally* WATS-Related and Other Amendments of Part 69, Notice of Proposed Rulemaking, CC Docket No. 86-1, FCC 86-1, paras. 2-4 (released Jan. 6, 1986).

[3] That allocation factor has changed over time. During the 1971-81 period, most of this investment was apportioned on the basis of the Subscriber Plant Factor (SPF) that was adopted in the "Ozark" Separations plan. During the 1982-85 period, SPF was been frozen at the 1981 average level. *See* section 67.124(d) of the Commission's Rules, 47 C.F.R. § 67.124(d)(1985). As of January 1, 1986, we have begun replacing frozen SPF with a nationwide, uniform 25% allocation factor, which is being phased in over an eight-year period. MTS/WATS Market Structure and Amendment of Part 67, Decision and Order, 50 Fed. Reg. 939, paras. 1, 15 (1984), *aff'd on recon.* , FCC 86-56 (released Jan. 30, 1986), *appeal docketed*, Rural Telephone Coalition v. FCC, No. 84-1110 (D.C. Cir. March 22, 1984). The Ozark plan assigned the portion of a WATS access line from the end office that normally serves the end user to the end office that functions as a WATS serving office to a different separations category. The *WATS Direct Assignment Order* modified the "exchange trunk" classifications to achieve the direct assignment of this portion of a WATS access line as well.

[4] Amendment of Part 67, Second Recommended Decision and Order, 48 Fed. Reg. 46,554, para. 81-82 (1983).

[5] Amendment of Part 67, Decision and Order, 96 FCC 2d 781, para. 61 (1984). Pending the outcome of this further study, we modified our access charge treatment of WATS access lines, which had initially been included in the special access category in anticipation of direct assignment, and treated them like ordinary subscriber lines. MTS/WATS Market Structure, Memorandum Opinion and Order, 97 FCC 2d 834, paras. 102-06 (1984).

[6] Amendment of Part 67, Recommended Decision and Order, CC Docket No. 78-72 and 80-286, Mimeo No. 139 (released Oct. 8, 1985).

[7] *Id.* at para. 28.

[8] See *WATS Direct Assignment Order* at paras. 6-7. Consistent with this separations change, we amended the access charge rules to provide that the costs of interstate WATS access lines be recovered through flat monthly special access charges, beginning June 1, 1986. *See* WATS-Related and Other Amendments of Part 69, Report and Order, CC Docket No. 86-1, FCC 86-115 (released March 21, 1986) (hereinafter cited as *WATS Access Charge Order*). In the *WATS Direct Assignment Order*, we also adopted the Joint Board recommendation that the costs of toll terminal lines, which carry no local exchange traffic, be allocated based upon relative toll minutes of use. *WATS Direct Assignment Order* at para. 6-7.

[9] MCI Petition at 3-4.

[10] *Id.* at 5-6. As an additional point, MCI contends that because screening is not available with terminating WATS access lines (those used with 800 service), these lines are capable of, and cannot be prevented from, terminating both interstate and intrastate telephone calls. *Id.* at 6; MCI Comments on Argo Petition at 6.

[11] MCI asserts that many OCCs provide travel card services through this type of arrangement. MCI Reply Comments at 5.

[12] MCI Petition at 4-5.

[13] *Id.* at 6-7.

[14] *See supra* note 3.

[15] *Id.* at 7-8.

[16] *Id.* at 2, n. 1 and 9.

[17] MCI asserts that the same allocation factor should apply to toll terminal lines as well. *Id.* at 9-10.

[18] *Id.* at 10. MCI maintains that the most consistent treatment of all NTS plant would be the direct assignment of each line based on the tariff from which the access service is purchased.

[19] Argo does not describe the specific configuration it employs in providing its "WATS-like" service. As we stated in the *WATS Access Charge Order*, "OCCs have generally provided their WATS-like services by using special access lines from their customers' premises to their facilities, which has allowed them to avoid any CCL changes on the closed end of those services." *Id.* at para. 16, n.64. By contrast, AT&T uses special access lines in its WATS offering that connect the subscriber's premises to the LEC's WATS serving office. *See supra* note 2.

[20] Argo Petition at 2. Argo notes that it uses a single dedicated access line for interstate and intrastate WATS-like services to the extent it is authorized to do so. *Id.*

[21] *Id.* at 3.

[22] ALC Comments at 2; *see also* GTE Sprint Comments at 3.

[23] ALC Comments at 2.

[24] *Id.* at 3-4.

[25] *Id.* at 3.

[26] GTE Sprint Comments at 3.

[27] *Id.* at 3.

[28] *Id.* at 3-4.

[29] AT&T Comments at 4 and n. ***; Ad Hoc Comments at 2, 4; ARINC Comments at 2; Bell Atlantic Comments at 2-3; National Data Comments at 2-3.

[30] Bell Atlantic Comments at 3-4; NYNEX Comments at 10-11; Pacific Bell and Nevada Bell Comments at 2-3. National Data maintains that MCI is "simply wrong" in its assertion that interstate 800-service access lines can be used to receive calls from within the same state. National Data Comments at 5-6 and n.7.

[31] AT&T Comments at 5; *see also* National Data Comments at 5, Southwestern Bell Comments at 3. *See also* Ad Hoc Comments at 5-6 (carriers providing WATS access lines do so only in accordance with the operational restrictions set forth in applicable interstate or intrastate WATS tariffs, notwithstanding an IXC's subsequent unconventional cross-jurisdictional use of the WATS service.)

[32] AT&T Comments at 6. *See also* National Data Comments at 8, n.9. AT&T cites to the entry/exit surrogate adopted by this Commission in determining the jurisdictional nature of Feature Group A and B access to support its position that the jurisdictional character of traffic depends on the point of entry to an IXC's network. AT&T Comments at 6, n. *; *see also* Bell Atlantic Comments at 4-5. MCI rejects reliance on the entry/exit surrogate in determining the jurisdictional nature of a call, asserting that the surrogate is applied only when the reseller is unable to determine the point of origination and/or termination, which is not the case for WATS resellers. MCI Reply Comments at 13, n.38.

[33] NYNEX Comments at 7-10.

[34] MCI Reply Comments at 12, n.35.

[35] AT&T Comments at 4-5; NYNEX Comments at 3, 15; National Data Comments at 4.

[36] Southwestern Bell Comments at 4; *see also* National Data Comments at 4-6.

[37] *See, e. g.*, AT&T Comments at 5; *see also* NYNEX Comments at 3. NYNEX argues that MCI erroneously contends that this Commission's rationale for direct assignment of WATS access line costs is inconsistent with the separations treatment of the costs of non-WATS special access lines. NYNEX maintains that the costs of private lines are directly assigned to the interstate jurisdiction because measurement of relative jurisdictional usage on those lines is not feasible, while direct assignment of WATS access lines was adopted solely because the nature of WATS precludes "mixed" jurisdictional use. *Id.* at 14.

[38] Bell Atlantic Comments at 6. *See also* NYNEX Comments at 13 (MCI's argument about inconsistency with SPF is premised on its assertion that WATS access lines carry mixed intrastate and interstate traffic).

[39] NYNEX Comments at 15. NYNEX also contends that MCI's request to reconsider the separations treatment of toll terminal lines should be rejected because it presents no facts to rebut this Commission's finding that toll terminal line costs should be allocated based on relative use. *Id.* at 12, n. 22. Application of the common line separations factor to toll terminal lines, which do not carry local exchange traffic, would clearly be inaccurate, according to NYNEX. *Id.* at 15.

[40] AT&T Comments at 8. AT&T argues that if interstate and intrastate "WATS-like" services are provided using single dedicated access lines, the costs of such lines should be assigned directly to the interstate jurisdiction in the same fashion as special access costs for private line facilities that may carry both interstate and intrastate communications. *Id.* at 7, n.****.

[41] *See supra* note 3.

[42] These AT&T services were OUTWATS, which AT&T now describers as WATS, and INWATS, which AT&T now describes as 800 service.

[43] *See supra* note 19.

[44] We have imposed no regulatory constraint precluding OCCs from offering a bulk-rated interexchange service, whether configured as WATS or a WATS-like service, in a jurisdictionally pure manner.

[45] WATS was really an offering of the partnership between AT&T Long Lines and the Bell Operating Companies prior to divestiture. Some of the service, specifically shorthaul intrastate interexchange services, provided by the partnership prior to divestiture is now being offered to end users by local exchange carriers. The costs of access lines used in all such "WATS" services were not directly assigned before June 1, 1986.

[46] Questions with respect to restrictions that local exchange carriers may or may not impose upon the use of WATS access lines have arisen in connection with some recent access tariff filings. Midyear 1986 Access Tariff Filing, Memorandum Opinion and Order, Mimeo No. 4621, para. 14 (released May 20, 1986)(Common Carrier Bureau); Midyear 1986 Tariff Filing, Memorandum Opinion and Order, Mimeo No. 4867, para. 17 (released May 30, 1986). These questions are discussed in a companion order.

[47] *Smith v. Illinois Bell*, 282 U.S. 133, 150 (1930). *See also MCI Telecommunications Corp. v. FCC*, 730 F.2d 135, 141 (D.C. Cir 1984)("(c)ost allocation is not purely an economic issue--it necessarily involves policy choices . . . ").

[48] MCI has not asserted that OCCs can complete interstate calls on an intrastate WATS line (or intrastate calls on an interstate WATS line) without combining the underlying service, through their own switching facility, with other services. For pro-competitive reasons we have allowed carriers like MCI to resell WATS services and configure their networks as they see fit, but it does not necessarily follow that we must now change the separations treatment of the access lines used to provide the underlying WATS service to reflect OCC resale of this service.

[49] In addition to the OCC WATS resale configurations, MCI also points to the lack of screening on interstate 800-service access lines as a basis for modifying our direct assignment decision. MCI asserts that these lines are not jurisdictionally pure because they are capable of, and cannot be prevented from, terminating intrastate telephone calls. However, as MCI itself notes, 800-service calls are screened by jurisdiction at the originating end. MCI Reply Comments at 11, n.33. Moreover, even when intrastate and interstate 800 services share a single telephone number, separate access lines are required for each service. AT&T Communications, Tariff F.C.C. No. 2, 9th Revised Page 67 (effective December 13, 1985). Therefore, AT&T's 800 service, as provided under tariff, does segregate intrastate and interstate traffic on separate access lines. MCI nevertheless contends that AT&T still cannot prevent other cross-jurisdictional calls from being dialed into the 800-service access lines. Although MCI may be correct as a technical matter, we do not believe that this necessitates a change in the separations treatment of WATS access lines. The only way that calls can be dialed into an 800-service access line is if the calling party knows the standard 10-digit number (the "POTS number") to which the 800-number is translated at the Originating Screening Office. Provision of Access for 800 Service, Notice of Proposed Rulemaking, CC Docket No. 86-10, FCC 86-27, para. 4 (released Jan. 23, 1986). However, this POTS number is generally not made available to the subscriber. Even if the subscriber were to learn the POTS number, it would be unlikely to provide the number to others to call it using local or originating toll service, for such calls would be subject to potential double billing --the calling party would be assessed local or toll charges at the originating end of the call and the 800-service subscriber would be charged 800-service rates as well. We think it unsound to base our separations treatment of WATS access lines on a potential use of 800-service lines that is unauthorized and undoubtedly *de minimis*.

[50] In light of our disposition of MCI's petition, we need not address the arguments of AT&T and the BOCs that the uses of WATS suggested by MCI should not change the separations treatment of the access connections purchased by the principal IXC as part of its offering.

[51] MCI also obliquely attacks our decision to assign the costs of toll terminal lines on the basis of relative use. Because MCI fails to state any clear reasons for its disagreement with our decision, we deny this reconsideration request.

[52] A similar argument was raised by MCI and rejected in the *WATS Access Charge Order* . *See WATS Access Charge Order* at para. 15.

[53] Amendment of Part 67, Order Requesting Further Comments, CC Docket No. 80-286, CC 32498, para. 130 (released Nov. 15, 1982).

[54] Section 67.124(d) provides that Category 1.21 includes subscriber line outside plant used exclusively for state private line services and state WATS closed end access service, while Category 1.32 encompasses subscriber line outside plant used exclusively for interstate private line services and interstate WATS closed end access services. *See WATS Direct Assignment Order* at App. A.

[55] Included in the category of mixed-use special access lines are any WATS access lines, used in an offering by AT&T or an OCC, that might carry a significant amount of mixed-use traffic. *See supra* note 46.

[56] Pending completion of this examination, we will continue to directly assign the costs of mixed-use special access lines.

[57] Members of the public are advised that for purposes of *ex parte* contacts this proceeding is a non-restricted, informal inquiry and rulemaking proceeding. *See generally* Section 1.1231 of the Commission's rules, 47 C.F.R. § 1.1231 (1985). Proceedings before the Joint Board will be governed by these *ex parte* rules as modified by the procedures adopted by the Joint Board in February 1982, CC Docket 80-286, FCC 82-106 (released March 5, 1982). The procedures for service of filings previously announced by the Joint Board when it established a closed service list in CC Docket No. 80-286 will continue to apply. The parties shown on the service list are required to serve all other parties on the list with copies of their filings. Other parties are welcome to participate in this proceeding but they are not required to serve their filings on other parties and in turn will not receive copies of the other filings. United States Express Mail or express courier service is to be used for service on the Joint Board member and staff member in Alaska. The proposal contained therein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

[58] This action is taken pursuant to 47 U.S.C. §§ 154(i) and (j), 201, 202, 203, 205, 218, 403, and 410, and 5 U.S.C. § 553(b). The Commission has found that a regulatory flexibility analysis is not required for the adoption of jurisdictional separations procedures. Amendment of Part 67, CC Docket No. 80-286, 49 Fed. Reg. 7934, para. 76 (1984).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of

MARGARET GARZA — MM DOCKET NO. 84-970
Bakersfield, California — File No. BPH-831202AG

KERN COMMUNICATIONS COMPANY — MM DOCKET NO. 84-971
Bakersfield, California — File No. BPH-831202AX

For Construction Permit for a New FM Station

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 1986; Released: December 24, 1986

By the Review Board:

1. The Review Board has under consideration the petition for reconsideration filed on October 31, 1986 by Kern Communications Company (Kern) and an opposition thereto filed by Margaret Garza (Garza). In our *Decision* released October 3, 1986, 1 FCC Rcd 51, 61 RR 2d 371, we affirmed the *Initial Decision (I.D.)*, FCC 86D-25, released March 27, 1986, which found Garza to be the comparatively superior applicant, and granted Garza's application. Kern's exceptions before the Board objected only to the *I.D.'s* conclusions in favor of Garza on two potentially disqualifying misrepresentation/lack of candor issues. In affirming the *I.D.*, we noted that Kern's exceptions did not allege with particularity any material error in the *I.D.'s* resolution of the standard comparative issue; instead, Kern merely attempted impermissibly to incorporate by reference its proposed findings of fact and conclusions of law. 1 FCC Rcd at 52 n.*, 61 RR 2d at 372 n.*. We therefore ruled that, pursuant to Section 1.277(a) of the Commission's Rules, 47 CFR 1.277(a), Kern had waived its right to except to the *I.D.'s* resolution of the standard comparative issue. *Id.* (citing *Filing Exceptions & Briefs Before Review Board*, 69 FCC 2d 1193, 44 RR 2d 960 (Rev. Bd. 1978)). Subsequently, we denied Kern's October 6, 1986 motion for leave to file consolidated supplemental exceptions "because it is an unauthorized pleading raising extraneous matters that do not relate to Kern's exceptions, which were denied in the *Decision*, and that are, in any event, non-decisional." *Order*, FCC 86R-68, released October 10, 1986.

2. In its petition for reconsideration, Kern again seeks to raise objections to the *I.D.'s* resolution of the standard comparative issue and requests leave to file consolidated supplemental exceptions. As justification for its unprecedented request to raise these matters so late in the proceeding, it claims that the Commission's intervening alleged "withdrawal" of its minority and female comparative preference policy, as enunciated in the Commission's brief filed September 12, 1986 in *Steele v. FCC*, No. 84-1176 (D.C. Cir.) (rehearing *en banc*), renders decisional its current objections. Specifically, Kern claims that it is better enhanced qualitatively than Garza and has superior comparative coverage of areas and populations, and that the ALJ erred in questioning Kern's 100% full-time integration commitment. We shall deny the petition for reconsideration because Kern has previously waived its objections to the comparative issue, *Decision*, 1 FCC Rcd at 52 n.*, 61 RR 2d at 372 n.*; has not alleged any new factual matters that would warrant reconsideration, *see* 47 CFR 1.106(b)(2) and (c)(1); and has not demonstrated that the public interest requires any further consideration of its arguments, *see* 47 CFR 1.106(c)(2).[1]

3. ACCORDINGLY, IT IS ORDERED, That the petition for reconsideration filed on October 31, 1986 by Kern Communications Company IS DENIED, and the supplemental consolidated exceptions and briefs filed on November 5, 1986 by Kern Communications Company IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Jerold L. Jacobs
Member, Review Board

FOOTNOTE

[1] Kern's sole principal, Catherine Swajian Abernathy, who is the proposed full-time (40 hours per week) general manager of the station, will continue to spend 7-10 days per month some 3,000 miles from Bakersfield at Washington, D.C., serving as a congressional administrative assistant. *I.D.*, paras. 9-10, 12-13 and n. 3. The *I.D.* refused to award Kern full-time credit for this proposal, because Ms. Abernathy's vague statement that "her work at the station will take priority over other time commitments ... is not sufficient to ... demonstrate a reasonable likelihood that the proposal will be fully effectuated." *Id.*, para. 34 (citing *Blancett Broadcasting Co.*, 17 FCC 2d 227, 15 RR 2d 1349 (Rev. Bd. 1969); *Lewis Broadcasting Corp.*, 11 FCC 2d 889, 12 RR 2d 627 (Rev. Bd. 1968)). We agree with this assessment and have consistently awarded less than full-time credit for applicants which have failed to meet their burden of showing specifically how a proposed full-time position at a station can be effectuated despite other significant commitments elsewhere. *See, e.g., Metro Broadcasting, Inc.*, 99 FCC 2d 688, 701, 57 RR 2d 440, 450 (Rev. Bd. 1984)(part-time credit for principal who would spend two months per year as state legislator), *rev. den.*, FCC 85-558, released October 18, 1985; *Muncie Broadcasting Corp.*, 89 FCC 2d 123, 133, 51 RR 46, 54 (Rev. Bd. 1982) (diminished credit for principal-state legislator who would work weekends and evenings and maintain telephone hook-up with station)(subsequent history omitted). Because Garza has 100% full-time integration credit and Kern's credit is significantly diminished, *I.D.*, paras. 30, 34, Garza is entitled to a substantial integration preference, which cannot be overcome by differences in the applicants' qualitative enhancements, *see Van Buren Community Service*, 87 FCC 2d 1018, 1022, 50 RR 2d 115, 119 (Rev. Bd. 1981), and which outweighs the slight comparative coverage preference that Kern seeks, *see Jarad Broad-*

casting Co., Inc., 1 FCC Rcd 181, 190, 61 RR 2d 389, 411 (Rev. Bd. 1986), *recon. denied*, FCC 86R-81, adopted December 16, 1986.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-18

In the Matter of

Amendment of Section 73.202(b). RM-4996
Table of Allotments,
FM Broadcast Stations.
(Twentynine Palms, California)

REPORT AND ORDER

(Proceeding Terminated)

Adopted: November 7, 1986 Released: December 24, 1986

By the Acting Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making* herein, 51 FR 4190, February 3, 1986, issued in response to a petition filed by Wayne R. Stenz, d/b/a Westwind Radio Company ("petitioner"), proposing the allotment of Channel 299A to Twentynine Palms, California, as that community's second local FM broadcast service. Supporting comments were filed by petitioner reiterating his intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 299A to Twentynine Palms, California, since it could provide a second local FM service to the community for diversity of programming and viewpoints.

3. As indicated in the *Notice*, Channel 299A can be allotted to Twentynine Palms consistent with the minimum spacing requirements of Section 73.207(b) of the Commission's Rules. Additionally, since the proposed allotment is within 320 kilometers (199 miles) of the common U.S.-Mexico border, concurrence of the Mexican government was obtained.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 9, 1987, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Twentynine Palms, California	239, 299A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. The window period for filing applications on Channel 299A at Twentynine Palms, California, will open on February 10, 1987 and close on March 11, 1987.

7. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Acting Chief
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-86

In the Matter of

Amendment of Section 73.202(b), RM-5009
Table of Allotments,
FM Broadcast Stations.
(Clinton, Oklahoma)

REPORT AND ORDER

(Proceeding Terminated)

Adopted: November 18, 1986 Released: December 24, 1986

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 51 Fed. Reg. 11066, published April 1, 1986, proposing the substitution of Channel 238C2 for Channel 237A at Clinton, Oklahoma, and the modification of Station KCLI's license to specify the higher powered channel, at the request of Media Max Broadcasting, Inc. ("petitioner". Petitioner filed comments supporting the proposal. No other comments were received.

2. We believe the public interest would be served by allocating Channel 238C2 to Clinton, as proposed, since it could provide expanded radio service to Clinton and its environs. Further we shall modify the license of Station KCLI to specify operation on the higher powered channel pursuant to Section 1.420(g) of the Commission's Rules. See, *Modification of FM Broadcast Licenses to Specify Higher Class Adjacent and Co - Channels*, 51 Fed. Reg. 20290, published June 4, 1986.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 6, 1987, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below to read as follows:

City	Channel No.
Clinton, Oklahoma	238C2, 295

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Media Max Broadcasting, Inc. for Station KCLI, Clinton, Oklahoma, IS MODIFIED effective February 6, 1987, to specify operation on Channel 238C2 in lieu of Channel 237A, subject to the following conditions:

(a) The licensee shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Report and Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to: Media Max Broadcasting, Inc., 4112 NW 39 Expressway, Oklahoma City, Oklahoma 73112.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-200

In the Matter of

Amendment of Section 73.202(b), RM-5239
Table of Allotments,
FM Broadcast Stations
(Lone Grove, Oklahoma)

REPORT AND ORDER

(Proceeding Terminated)

Adopted. November 18, 1986 Released: December 24, 1986

By the Chief, Allocations Branch:

1. The Commission has before it the *Notice of Proposed Rule Making*, 51 FR 19864, published June 3, 1986, proposing the allocation of Channel 294A to Lone Grove, Oklahoma, as the community's first local FM service, at the request of SSS Communications, Inc. ("petitioner"). Petitioner filed comments supporting the allotment and reiterating its intention to apply for the channel, if allocated. No other comments were received.

2. Channel 294A can be allocated in compliance with the Commission's mileage separation requirements with a site restriction of at least 6.7 kilometers (4.2 miles) north to avoid a short-spacing to Channel 293A at Muenster, Texas. We believe the public interest would be served by allocating the channel since it could provide Lone Grove with its first local FM service.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c) (1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204 and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 6, 1987, the FM Table of Allotments, Section 73.202(b) of the Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Lone Grove, Oklahoma	294A

4. The period for filing applications will open on February 9, 1987, and close on March 9, 1987.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-272

In the Matter of

Amendment of Section 73.202(b) RM-5312
Table of Allotments,
FM Broadcast Stations.
(Winner, South Dakota)

REPORT AND ORDER

(Proceeding Terminated)

Adopted: November 18, 1986 Released: December 24, 1986

By the Chief, Allocations Branch:

1. The Commission has before it the *Notice of Proposed Rule Making*, 51 Fed. Reg. 27875, published July 9, 1986, proposing the allocation of Channel 253C1 to Winner, South Dakota, as the community's second local FM service, at the request of Tripp County Christian Radio, Inc. ("petitioner"). Petitioner filed comments supporting the allotment. No other comments were received. Channel 253C1 can be allocated to Winner in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.

2. We believe the public interest would be served by allocating Channel 253C1 to Winner since it could provide the community with its second local FM service. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 9, 1987, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, to read as follows:

City	Channel No.
Winner, South Dakota	229, 253C1

3. The window period for filing applications will open on February 10, 1987, and close on March 11, 1987.

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-275

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Alva, Oklahoma) — RM-5292

REPORT AND ORDER

(Proceeding Terminated)

Adopted: November 18, 1986 Released: December 24, 1986

By the Chief, Allocations Branch:

1. The Commission has before it the *Notice of Proposed Rule Making*, 51 Fed. Reg. 24876, published July 9, 1986, proposing the substitution of Channel 289C1 for Channel 232A at Alva, Oklahoma, at the request of Women, Handicapped Americans and Minorities for Better Broadcasting ("petitioner") and the modification of its construction permit for Station KTTL to specify operation on the higher powered channel. Comments were filed by the petitioner. No other comments were received.

2. Petitioner filed comments supporting the upgrading of its station from Channel 232A. However, it requests that Channel 289, as a Class C2 be allocated rather than the proposed Class C1. In support, it states that Channel 289C2 would not require any site restriction and thus could permit colocation of its tower on existing antennas in the area, thus removing any possible air hazard problem, while the 13.8 kilometer northwest site restriction on Channel 289C1 would require placement of the antenna in an area which has no existing antennas.

3. We believe the public interest would be served by substituting Channel 289C2 for Channel 232A at Alva, since it could provide the community with its third wide-coverage area FM service. Channel 289C2 can be allocated in compliance with the Commission's minimum distance separation requirements without a site restriction. Since no other party expressed an interest in use of the new channel at Alva, we are herein modifying the permit of Station KTTL to specify operation on Channel 289C2 in lieu of Channel 232A. See *Modification of FM Station Licenses*, 98 F.C.C. 2d 916 (1984). Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 6, 1987, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Alva, Oklahoma	259, 284, 289C2

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Women, Handicapped Americans and Minorities for Better Broadcasting, Channel 232A, Alva, Oklahoma, IS MODIFIED to specify operation on Channel 289C2 subject to the following conditions:

(a) The permittee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620;

(c) Nothing contained herein shall be construed to authorize major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-338

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Wurtsboro and Woodstock, New York)

REPORT AND ORDER

(Proceeding Terminated)

Adopted: November 20, 1986 Released: December 24, 1986

By the Acting Chief, Policy and Rules Division:

1. The Commission has before it for consideration the Notice of Proposed Rule Making, 50 Fed. Reg. 49080, published November 29, 1985, issued on our own motion, to substitute Channel 247A for Channel 261A at Wurtsboro, New York, and to rescind an earlier substitution of Channel 272A for Channel 261A and modification of Station WDST-FM's license at Woodstock, New York. Following the allocation of Channel 261A to Wurtsboro in 1983.[1], applications were filed by Jerome Gillman, Inc. ("Gillman") (BPH-831201AE) and Preston Mark and Susan Lea Pollack ("Pollacks") (BPH-840605ID). However, in processing the applications, the Commission found that there was no site available which could provide the required city-grade coverage to Wurtsboro and also meet the spacing requirements of Section 73.207 of the Commission's Rules. Both applicants had specified sites which failed to comply with either the spacing or city-grade coverage requirements. Comments in response to the Notice were filed by Gillman and the Pollacks. Reply comments were also filed by Gillman.

2. The Pollacks support the proposed channel substitution. They state that their previously specified site for Channel 261A can now be specified for the new channel in compliance with the Commission's rules. Gillman does not address the efficacy of allocating Channel 247A to Wurtsboro nor whether any transmitter sites would be available. Rather, his comments address the merits of the two applications and urge the Commission to process them as filed specifying Channel 261A.

3. We believe the public interest would be served by substituting the channels at Wurtsboro as proposed. Granting either of the applications for Channel 261A would require the Commission to waive its city-grade coverage or mileage separation requirements, an action which is neither desirable nor necessary in light of the availability of Channel 247A. The allocation of Channel 247A to Wurtsboro is further enhanced since it does not require an existing station to disrupt its service to the public by changing its channel of operation. We will not address the comments of Gillman pertaining to the relative merits of its application and that of the Pollacks since the issues raised are more properly handled in connection with the processing of the amended applications. As stated in the Notice, the applicants will retain their cut-off protection since the substituted channel is equivalent.

4. Channel 247A can be allocated to Wurtsboro in compliance with the Commission's minimum distance separation and other technical requirements with a site restriction of 4 kilometers (2.5 miles) northwest. Canadian concurrence in the allocations has been received since both communities are located within 320 kilometers (200 miles) of the U.S.-Canada border. Further, we will rescind the modification of Station WDST-FM's license to specify operation on Channel 272A and amend the Table to reflect the continued allotment of Channel 261A at Woodstock on which Station WDST-FM is currently operating.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204 and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 9, 1987, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

City	Channel No.
Woodstock, New York	261A
Wurtsboro, New York	272A

6. IT IS FURTHER ORDERED, That the modification of the license of Woodstock Communications, Inc. for Station WDST-FM, Woodstock, New York, to specify operation on Channel 272A in lieu of its present Channel 261A IS RESCINDED.

7. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Report and Order to the following applicants for Channel 261A at Wurtsboro and to Woodstock Communications, Inc.

Jerome Gillman, Inc.
MacDaniel Road
Shady, New York 12479
(BPH-831201AE)

Station WDST-FM
Woodstock Communications, Inc.
118 Tinker Street
Woodstock, New York 12498

Preston Mark & Susan Lea Pollack
RFD 1 - Box 214
Liberty, New York 12754
(BPH-840605ID)

8. IT IS FURTHERED ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Acting Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] *Report and Order*, 48 Fed. Reg. 54980 , published December 8, 1983. The Channel 261A allocation at Wurtsboro also required the substitution of Channel 272A for Channel 261A at Woodstock, licensed to Woodstock Communications, Inc., the modification of the license for Station WDST-FM to change frequency and transmitter location.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-254

In the Matter of

Amendment of Section 73.202(b), RM-5267
Table of Allotments,
FM Broadcast Stations.
(Meredith, New Hampshire)

REPORT AND ORDER

(Proceeding Terminated)

Adopted: November 20, 1986 ;Released: December 24, 1986

By the Chief, Allocations Branch:

1. The Commission has before it the *Notice of Proposed Rule Making*, 51 Fed. Reg. 24172, published July 2, 1986, which proposed the allotment of Channel 268A to Meredith, New Hampshire, as the community's first local FM service, at the request of Harvest Broadcasting Services ("petitioner"). Comments supporting the allotment were filed by the petitioner [1] and by William Forbes. No oppositions were received.

2. Channel 268A can be allocated to Meredith in compliance with the Commission's minimum distance separation and other technical requirements without the imposition of a site restriction. We believe the public interest would be served by allocating the channel, as proposed, since it could provide Meredith with its first local service. Canadian concurrence in the allotment has been received since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections O.61, O.2O4(b) and O.283 of the Commission's Rules, IT IS ORDERED, That effective February 6, 1987, the FM Table of Allotments, Section 73.202(b) of the Rules, IS AMENDED, for the community listed below, to read as follows:

City	Channel No.
Meredith, New Hampshire	268A

4. The window period for filing applications will open on February 9, 1987, and close on March 9, 1987.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations. Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] Petitioner's comments were filed four days late but requests their acceptance, stating that they were unavoidably delayed because the petitioner was in the hospital. Its comments will be accepted for purposes of expressing continuing interest.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-256

In the Matter of

Amendment of Section 73.202(b),	RM-5259
Table of Allotments,	RM-5548
FM Broadcast Stations.	
(Sioux Falls and Salem [1] South Dakota)	

REPORT AND ORDER

(Proceeding Terminated)

Adopted: November 19, 1986 Released: December 24, 1986

By the Acting Chief, Policy and Rules Division:

1. The Commission has before it the *Notice of Proposed Rule Making*, 51 FR 24172, July 2, 1986, proposing the allocation of Channel 270C2 to Sioux Falls, South Dakota, as the community's sixth local FM service, at the request of Kirkwood Broadcasting, Inc. ("petitioner"). Comments supporting the allocation were filed by the petitioner and by Barbara Elkjer, each stating an intention to apply for the channel, if allocated. McCook County Broadcasting Company ("McCook") filed a counterproposal requesting the allocation of Channel 270C2 to Salem, South Dakota. [2] McCook stated an intention to apply for the channel, if allocated.

2. McCook states that Salem is an incorporated city with a 1980 U.S. Census population of 1,486 persons and the seat of McCook County. It states that Channel 270C2 would represent a first local aural service to both Salem and its county. It describes Salem as a substantial community and the trading and governmental center for McCook County. It goes on to provide information as to the community's businesses and local government services. It concludes that despite its smaller population, Salem has a presumptive greater need for its first broadcast station than Sioux Falls has for its sixth FM and and twelfth local service.

3. Petitioner filed reply comments arguing against the allotment of the Class C2 channel to Salem, suggesting instead that it be allocated Channel 250 as a Class A. We believe, however, that both communities could benefit from the allotment of the requested Class C2 facilities since no interest in a Class A allotment has been expressed and the proposal could provide a first service to Salem and its county, as well as additional service to Sioux Falls. Therefore, in an effort to accommodate both interests, the staff has performed an engineering study to determine if Class C2 channels are available for allocation to both communities. Our study found that Channel 270C2 can be allocated to Sioux Falls, as proposed, with a site restriction of 25.9 kilometers (16.1 miles) northwest to avoid a short-spacing to Channel 273A at Canton, South Dakota, and Channel 263C2 can be allocated to Salem with a site restriction of 25.6 kilometers (15.9 miles) west to avoid a short-spacing to Station KLQL, Channel 266, Luverne, Minnesota.

4. Accordingly, based on the above discussion, we believe the public interest would be served by allocating Channel 270C2 to Sioux Falls, as the community's sixth local FM service, and Channel 263C2 to Salem, as its first local FM service. Accordingly, pursuant to the authority contained in Sections 4(i) 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 9, 1987, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Salem, South Dakota	263C2
Sioux Falls, South Dakota	223, 228A, 243, 247, 261A, 270C2, 284

5. The window period for filing applications for both channels will open on February 10, 1987, and close on March 11, 1987.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Acting Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] This community has been added to the caption.

[2] Public Notice of the filing of the counterproposal was given on August 25, 1986, Report No. 1613.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Complaint by	8330-W
Michael Levinson	C9-468
against	
Station WXXI-TV, Rochester, New York	

Adopted: December 12, 1986 Released: December 24, 1986

STAFF RULING

By the Chief, Fairness/Political Programming Branch:

1. The Commission has before it a complaint, filed by Michael Levinson, against noncommercial educational television station WXXI-TV, Rochester, New York. Levinson alleges that the licensee "summarily refused" his request for broadcast time in violation of his rights as a "legally qualified candidate" for federal public office under Section 312(a)(7) of the Communications Act of 1934, as amended.

Background

2. According to Levinson, he publicly declared his candidacy for the office of U.S. Representative for New York's 30th Congressional District in April 1986. He also formed a campaign committee, chaired by his mother and operated out of his residence. He began soliciting signatures in support of his petition for nomination as an independent ("Lev Party") candidate for inclusion on the November 4 general election ballot. According to Levinson, he met the "formal signature" requirement and was sent a "letter of acknowledgement" by the New York State Board of Elections.

3. On September 5, Levinson asked WXXI-TV for a three-hour block of time, 7:00-10:00 p.m. on Saturday, September 27, stating that he was "a candidate, on the ballot" for Congress. On September 9, Levinson filed an "addendum" to his request. It contained his justifications for requesting three hours on September 27. In the September 9 letter, Levinson noted that he had "already declared" that, if his name were removed from the ballot, he would continue to run as a write-in candidate.[1] In fact, many of Levinson's signatures were "challenged" under New York law (N.Y.S. Section 6-154), and on September 11, 1986, the New York Board of Elections invalidated 1626 of the signatures, thus disqualifying Levinson from a place on the November 4 ballot.[2]

4. On September 12, 1986, WXXI-TV advised Levinson that, according to the board of elections, he was not on the November 4 ballot and had not previously been so situated. The station also noted that, while one may be a legally qualified "write-in" candidate under FCC rules if one makes, *inter alia*, a "substantial showing" of bona fide candidacy, Levinson had made no such showing. The station, therefore, asked that Levinson submit "more substantial proof" of his candidacy. Levinson responded on September 16, submitting as "evidence" of his bona fide candidacy: (i) the formation of his campaign committee and establishment of his (residential) campaign headquarters in April 1986; (ii) a "press conference" he called for September 8, at his "campaign headquarters," which was covered by WOKR, and at which he announced his desire to run as a write-in candidate; (iii) two versions of a "palm card," the first of which (3000 copies printed) urged recipients to vote for Levinson in the September 9 primary, and the second of which (5000-6000 copies printed) urged recipients to vote for him in the November 4 general election;[3] (iv) "campaign literature," which consisted of reprints of three articles (orginally appearing on June 4, 11, and 18, 1986, in the Rochester *Downtown* paper), several thousand copies of which were printed and distributed in July and August;[4] (v) letters from several "Lev Campaign" workers describing their activities; (vi) a package of political rates from WROC-TV, Rochester, which Levinson states is a "tacit acknowledgement" that he is a candidate; and (vii) evidence of several speeches he made while he was soliciting signatures for his ballot petitions.

5. In a letter dated September 19, WXXI-TV denied Levinson's request, asserting that the submitted materials show no evidence of any "cogent major activity" subsequent to a hearing in Albany on his ballot petition. The station stated that Levinson had indicated "a fresh start or beginning, not a cumulative package of 'write-in candidate' activities." Furthermore, wrote the station, even if Levinson should make a "substantial showing," his request for a three-hour block of time was "unprecedented, unreasonable and unacceptable." On September 24, the same day that he received WXXI-TV's response, Levinson drafted the instant complaint challenging the good faith of the licensee and claiming that WXXI-TV "[has] no intention of honoring [its] legal requirement under 315 and 312(a)(7)." Levinson supplemented his complaint on September 30, 1986, with letters from campaign workers and from the State Board of Elections acknowledging receipt of his petitions, which Levinson maintains the station willfully excluded from its consideration.[5] Levinson sent copies of both the complaint and the supplement to the station.

6. On October 8, WXXI-TV wrote that Levinson's latest materials contained "very little new information concerning any campaign activities." Further, the station pointed out that since his mother's illness, the "Lev Campaign" effectively had no active campaign manager. In addition, the station noted that Levinson had no "marked campaign headquarters"; had given no indication of the contents of his political platform; had virtually no newspaper coverage; and was absent from community events attended by other candidates. The station concluded that Levinson had not made a "substantial showing" of his candidacy.

7. On October 21, Levinson filed with the Commission (with a copy to the station) an extensive review and comment on the prior proceedings. In this document, he argues essentially that, under *Flory v. FCC*, 528 F.2d 124 (7th Cir. 1975), his campaign activities should be examined *in toto* and not "fractured" into those which preceded his write-in announcement and those which followed it.[6] On October 23, at the request of the Mass Media Bureau, WXXI-TV through counsel filed a response to Levinson's October 21 filing. WXXI-TV first

summarized the previous communications between Levinson and the station and concluded that Levinson had failed to show that he had "engaged to a substantial degree in activities commonly associated with political campaigning" subsequent to his September 8 "write-in" announcement. The station noted that, since the public declaration of his write-in candidacy, Levinson had *not* : (1) received newspaper coverage from the two daily and dozen weekly newspapers serving the Rochester area; (2) received news coverage by three television and 15 radio stations in the market; and (3) appeared at community events where other candidates have appeared. Rather, the station indicated that Levinson had submitted "an insubstantial number of volunteer activities and plans, and the publication and distribution of an unknown amount of campaign material in certain areas." Furthermore, noted the station, despite repeated assurances that documentation of campaign activities was forthcoming, and despite WXXI-TV's repeated requests for documentation, "the volume of paperwork submitted by Mr. Levinson has failed to provide any substantial showing regarding a continuing, active campaign." The station concluded that Levinson "is not a legally qualified candidate and he has failed . . . to make a substantial showing that he is a bona fide candidate by the write-in method."

Discussion

8. Under Section 312(a)(7) of the Communications Act of 1934, as amended [47 U.S.C. Section 312(a)(7)], legally qualified federal candidates have a right of "reasonable access" to broadcast facilities.[7] *See CBS v. FCC*, 453 U.S. 367, 385 (1981). At issue in the instant case is whether or not Levinson became a "legally qualified candidate" for Congress under the Communications Act and Commission precedent. If he did not, he was not entitled to access. In resolving this issue, a subissue is whether Levinson's campaign activity during the period when he was seeking to be included on the primary/general ballot by nominating petition should be considered as part of his substantial showing of bona fide candidacy. Levinson alleged that his campaign activity has continued since his exclusion from the ballot and declaration of write-in candidacy. He has submitted letters from campaign workers stating that the writers were and are active Lev Campaign workers and describing their activities.[8]

12. In order to be a legally qualified write-in candidate, the would-be office holder must: (1) make a public announcement of his or her intention to seek election by write-in method and be eligible under state law to be voted for by sticker, "write-in," or other method; and (2) make a "substantial showing" that he or she is a bona fide candidate. *See* 47 U.S.C. Section 73.1940(a)(2)(ii). Subparagraph (a)(5) defines the general meaning of the term "substantial showing" and provides examples of activities normally involved in such a showing, while stating that there "may be still other activities which contribute to such a showing." These activities include: (i) making campaign speeches; (ii) distributing campaign literature; (iii) issuing press releases; and (iv) maintaining campaign headquarters. The burden is on the would-be candidate to demonstrate that he or she has "engaged to a substantial degree" in these activities. *See* 47 C.F.R Section 73.1940(a)(5); and *Douglas S. Kraegar*, 87 FCC 2d 751, 753 (1980). This agency will review the licensee's decision only to determine if it was unreasonable or made in bad faith. *See Kraegar, supra.*

13. We believe that the above-described activities, carried on when the would-be candidate is seeking a position on the ballot, constitute evidence of a "substantial showing" *if* those activities are continued after the ballot attempt proves to be unsuccessful. If campaign activity essentially ceases with exclusion of the candidate from the ballot, it would be contrary to the purpose of Section 73.1940(a) to grant "legally qualified" status on the basis of that prior, terminated activity. The Commission's rules are designed to recognize *actual*, not potential, candidates. *See, e. g., Report and Order in BC Docket 78 - 103*, FCC 78-503, 43 RR 2d 905, 911 (1978).

14. In the instant case, we do not believe that the licensee was unreasonable in determining that Levinson failed to make a substantial showing that he was a legally qualified candidate for United States Congress. Thus, Levinson claimed to have continued to campaign, but submits no evidence regarding any speeches he has made since the September 8 announcement or any other activities in which he has engaged since that date. He submitted letters from his "campaign workers" regarding their continuing activity, but these few letters present no evidence of "substantial" Levinson campaign activities. They contain no specific information concerning time or the writer's duties. Furthermore, several of the letters deal with posting and distributing Levinson's campaign platform, which had not yet been drafted when the complaint was filed. *See, e. g., National Citizens Committee for Broadcasting*, 75 FCC 2d 650 (1979). As to the so-called "campaign literature," this consists of the three reprints from June 1986 newspapers, none of which referred to his write-in campaign. Clearly, the licensee would have been reasonable in not considering these as evidence of a substantial showing.

15. Additionally, Levinson submitted letters from five people who have held "candidate parties" at their homes. Levinson furnished no information as to the nature of these "parties," or how they related to his campaign. Therefore we cannot conclude that such house parties are a type of activity "commonly associated with political campaigning." Furthermore, Levinson admitted in his complaint that he did not write or issue any "press releases" whatsoever, and that the reason for his absence at community events which featured various local candidates was that he had not been invited to these events. The lack of media coverage given to Levinson's campaign is only probative insofar as it shows that no local broadcast or print media considered Levinson's post-announcement campaign activities significant enough to cover. Irrespective of the amount of media coverage given his campaign activities, Levinson had to demonstrate that he had been actively engaged in common campaign activities since his September 8 announcement, or at least that he had continued his pre-announcement campaign activities.

16. It is uncontroverted that Levinson expended some time, effort, and money in attempting to procure a place on the primary ballot and later on the general election ballot. Levinson did establish both a residential campaign headquarters and a campaign staff of volunteers who solicited signatures for his petitions. It is also uncontroverted that on September 8, 1986, Levinson made a "public announcement" of his intention to seek office as

a write-in candidate, if his name were removed from the ballot. However, Levinson has presented neither the station nor the Commission with evidence of his continuing and active engagement "to a substantial degree in activities commonly associated with political campaigning." Thus, his evidence was not such that a reasonable licensee could conclude that he was a "legally qualified candidate." *Flory, supra*, is distinguishable from the instant case, because Levinson has demonstrated no continuing substantial campaign activities since his September 8 announcement. *See Flory, supra*, at 131.

17. In sum, the materials submitted by Levinson to support his contention that he is "engaged to a substantial degree in activities commonly associated with political campaigning" simply fail to convince us that WXXI-TV was unreasonable in determining that he was not a bona fide, legally qualified candidate for U.S. Congress. Furthermore, Levinson's materials, including his allegations that the station: (1) failed to mail its September 19 response promptly; (2) failed to return each of the letters from his campaign workers; and (3) erroneously stated that he was not and had never been "on the ballot," do not show that the station acted in bad faith. On the contrary, WXXI-TV's correspondence with Levinson evidences the station's repeated efforts to allow him to make a "substantial showing." Moreover, in numerous phone calls to the Commission he stated that he would furnish the station and the Commission with further information about his campaign activities. These promises continued until October 31, but no such information was furnished.

18. Accordingly, no further action is warranted on Levinson's complaint. Due to the proximity of the election, Levinson was orally advised of this ruling when he telephoned the Commission on the afternoon of Friday, October 31, 1986.

19. Staff action is taken here under delegated authority. Application for Review by the full Commission may be requested within thirty days of the date of public notice of this action (*see* Commission Rule 1.4(b) [47 C.F.R. Section 1.4(b)]) by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration and, if mailed, should be sent by certified mail. Copies must be sent to the parties to the complaint. *See* Commission Rule 1.115 (47 C.F.R. Section 1.115).

FEDERAL COMMUNICATIONS COMMISSION

Milton O. Gross, Chief
Fairness/Political Programming Branch
Enforcement Division
Mass Media Bureau

FOOTNOTES

[1] This announcement allegedly was aired September 8 on the 12:00 noon and 6:00 p.m. newscasts of television station WOKR, Rochester.

[2] According to its July 24, 1986, ruling, a copy of which was submitted by Levinson on September 29, 1986, the Board of Elections had previously upheld a challenge to Levinson's petition to be on the *primary* ballot as a Republican candidate for nomination.

[3] Levinson indicates that these cards do not reference his write-in status, as he believed that his ballot attempt would be successful. He said he would update this information. He furnished no evidence that this was done.

[4] In addition, Levinson submitted letters from several volunteer campaign workers who indicated that they distributed copies of the "campaign literature" referred to herein between September 8 and September 30. See footnote 8, *infra*.

[5] Levinson also includes a photocopy of Section 6-154 of the New York Statutes which, he claims, states that "independent nominating petitions are *presumptivelyvalid* if in proper form," and argues that, therefore, WXXI-TV was incorrect when it claimed that he was not officially on the ballot when his request was made. We disagree. In an October 27, 1986, telephone conversation with a Commission staff member, Mr. Thomas Wallace, Executive Director of the New York State Board of Elections, stated that the "letters of acknowledgement" sent to Levinson on July 11 and August 21 were merely to indicate receipt of the pertinent petitions, and did not constitute an indication that Levinson was ever on the ballot.

[6] In *Flory*, the court held that a candidate who has not yet qualified for a ballot position under state election laws is nevertheless entitled to status as a "legally qualified candidate" if he or she: (1) is otherwise eligible under then Sections 73.120(a) and 73.657(a); and (2) commits to seeking election by write-in method in the subsequent election. 528 F.2d at 130.

[7] Section 312(a)(7) reads:

> (a) The Commission may revoke any station license or construction permit -
>
> . . . .
>
> (7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

Noncommercial educational stations are not exempt from this requirement. *Commission Policy in Enforcing Section 312 (a)(7) of the Communications Act*, 68 FCC 2d 1079, 1092 (1978).

[8] In these letters: (1) John Staley (September 12) stated that he is "distributing Rochester newspaper articles"; (2) the author (signature illegible) (September 14) is "passing out literature" in the district and plans on "working in Levinson's campaign for Congress until November 4th"; (3) James Alva (September 15) had passed around petitions and distributed campaign literature, and is "committed to supporting Mr. Levinson with additional work in passing out literature and spreading his platform . . ."; (4) Kevin Stansfield (September 15) is "helping to lay out the eight-page platform for national reform", five thousand copies of which he and his group of helpers will "put into the shopping bags of registered voters"; (5) Melvin Smith (September 15) "will be passing out literature . . . every day until the November election"; (6) Edward Snyder (September

15) will be "hanging posters and distributing literature -- the platform as soon as it's printed"; (7) Donna Pompa (September 28) passes out "cards and literature . . . every day to voters outside of supermarkets in [Levinson's] district"; Melvin Smith again (September 29) has been "Campaigning every day" and has "contacted stores who want our campaign posters and literature to give to their customers." Levinson also submitted letters from four individuals who hosted a "candidate party" at their houses: Barb Stewart (October 1), Ronald Riggles (September 30), Glen Drown (September 30), and Kevin Stansfield again (no date). Finally, Levinson submits a letter from Joseph Sanders, proprietor of the "Brown Bag Deli" in Rochester who considers his business to be one of Levinson's "grass roots offices" and who hosted a two-hour conference at the Deli on September 25.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN
TELEPHONE AND
TELEGRAPH CO. File No. I-T-C-87-026

Application for authority to lease
and operate facilities for service
to Malta

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: December 17, 1986 Released: December 24, 1986

By the Common Carrier Bureau:

1. The captioned uncontested application, filed on November 3, 1986 by American Telephone and Telegraph Co. (AT&T), requests authority to lease and operate satellite facilities for direct service to Malta. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Malta by AT&T.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-87-026 IS GRANTED, and AT&T is authorized to:

a. lease and operate eight satellite voice circuits between an appropriate earth station on the east coast of North America and an appropriate satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Malta, furnished by AT&T's correspondent in Malta; and

b. use said facilities to provide AT&T's regularly authorized services between the U.S. and Malta and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between AT&T and its correspondent in Malta, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

James L. Ball
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE
AND
TELEGRAPH CO. File No. I-T-C-87-009

Application for authority to acquire
and operate facilities for service to
various Caribbean Islands

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: December 18, 1986 Released December 24, 1986

By the Common Carrier Bureau:

1. The captioned uncontested application, filed on October 16, 1986 by American Telephone and Telegraph Co. (AT&T), requests authority to acquire and operate facilities for service to various islands in the Caribbean area. Upon consideration of the application, we find that authorization of the requested facilities and services is required by the public convenience and necessity and IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision by AT&T of direct service to the British Virgin Islands, Dominica, Grenada, Montserrat and St. Kitts and Nevis.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-87-009 IS GRANTED and AT&T is authorized to:

a. acquire from Cable & Wireless Public Limited Company (C&W) by IRU the following half interests in voice circuits in the Eastern Caribbean microwave system:

1 -Northern Section-	53
2 -Central Section-	51
3 -Southern Section-	33
4 -St. Lucia-St. Vincent segment of the Southern Section-	5
5 -St. Lucia-Grenada segment of the Southern Section-	24

b. acquire from C&W by IRU a one-half interest in 21 voice circuits in the Antigua-St. Kitts microwave system;

c. make available to C&W by lease 34 half circuits in the Third Florida-St. Thomas cable and modify the Order authorizing that cable in accordance with the attachment hereto;[1]

d. use the facilities authorized herein to provide AT&T's regularly authorized services between the U.S., on the one hand, and Antigua, St. Vincent, St. Lucia, Barbados, Trinidad, British Virgin Islands, Dominica, Grenada, Monserrat and St. Kitts and Nevis, on the other hand, and beyond.

3. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of operating agreements between AT&T and its correspondents in the points listed in d above, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

4. No substantial changes inconsistent with this or any other relevant Commission order shall be made before final execution of an IRU agreement between AT&T and C&W, and a copy of the agreements shall be filed with the Commission within 30 days of its execution.

5. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

James L. Ball
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] See AT&T, *et al.*, File No. I-P-C-81-050, released February 22, 1982, 88 FCC 2d 1630 (1982).

Before the
Federal Communications Commission
Washington D.C. 20554

PUBLIC NOTICE

Released :December 24, 1986

BELLSOUTH CORPORATION REQUESTS INCREASE IN CELLULAR RADIO CAPITALIZATION

Pleading Cycle Established

On December 15, 1986, BellSouth Corporation filed a request, pursuant to Section 22.901(c) of the Commission's rules, for a $500 million increase in its capitalization level for the provision of cellular radio services. BellSouth states that the increased capitalization is required for the continued operation of its wholly-owned subsidiary, BellSouth Mobility, Inc. The request also covers estimated capital requirements for future cellular acquisitions by the entity in which it and Mobile Communications Corporation of America are partners. If the request is granted, BellSouth's approved cellular capitalization would be increased to $727 million. BellSouth states that this amount represents estimated capital requirements for the operation of its cellular radio business until financial independence is achieved, and for anticipated growth in the business and other possible acquisitions. It also states that creditors will have no recourse to the stock or assets of its operating telephone companies, and that a grant of the request will not affect the level of capital infusions into those companies.

Parties wishing to comment on the BellSouth request should do so no later than January 12, 1987. Reply comments should be filed no later than January 22, 1987. Pleadings should reference file no. AAD 6-1547.

Parties are requested to serve copies of their comments on International Transcription Services at its office in Room 246, 1919 M Street, N.W., Washington, DC 20554, and on Gerald Brock, Chief, Accounting and Audits Division, 2000 L Street, N.W., Washington, DC 20554. Copies of filings in this proceeding may be obtained from International Transcription services, 2100 M Street, N.W., Washington, DC (202 857-3800). Copies are also available for public inspection and copying in Room 812, 2000 L Street, N.W., Washington, DC 20554.

For further information, contact Robert W. Spangler, (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 86-2

In the Matter of

Amendment of Part 81 of the
Rules to Permit Public Coast Stations to Serve Vehicles on Land. RM-5071

REPORT AND ORDER

(Proceeding Terminated)

Adopted: December 9, 1986 ; Released: December 31, 1986

By the Commission:

1. By Notice of Proposed Rule Making (NPRM) released January 27, 1986, FCC 86-10, 51 FR 4525, in this proceeding, the Commission proposed to amend Part 81 of the rules to permit VHF public coast stations to serve vehicles on land on a subsidiary basis. The Commission's rules currently restrict the use of maritime VHF public correspondence channels to communications between local area (VHF) public coast stations and ships and boats. Service to vehicles on land is prohibited.

2. In the NPRM in this proceeding we pointed out that our preliminary analysis suggested that permitting public coast stations to serve land mobile vehicles under certain conditions might be in the public interest.[1] However, because public coast stations utilize frequencies allocated internationally to the Maritime Service, we expressed our concern that these operations might diminish maritime communications and safety services. We also noted a serious concern about possible intervehicular abuse of the frequencies particularly if frequency synthesized equipment were used. Numerous comments were filed in response to the NPRM both supporting and opposing the proposal. The commenters are listed in Appendix A.

3. Public coast station licensees generally supported the proposal. Waterway Communications System, Inc. (WATERCOM) argues that the advent of cellular service, the removal of the restriction against Domestic Public Land Mobile Radio Service (DPLMRS) licensees serving vessels[2] and the prospect of mobile satellite service ensures that public coast stations no longer have a captive market for vessel traffic. Midland Enterprises, Inc. (Midland), a barge and towing service operator, argues that while maritime users are interested in service on a demand basis, traditional maritime carriers are legitimately interested in new traffic opportunities. Several carriers, including Marine Telephone Co. and those represented by River Communications, Inc. even suggested that the scope of services authorized to public coast stations be expanded to include paging and service to handheld portable units on land. It is suggested that these services be permitted on a co-equal basis and that state regulation be federally preempted to facilitate their implementation.

4. Various television licensees and interests represented by Maximum Service Telecasters, Inc., K-Six Television, Inc., and Gateway Communications, Inc. oppose service to land vehicles in the 216-220 MHz band out of concern for possible interference to TV reception. WATERCOM, a licensee for automated maritime telecommunications service (AMTS) replied that existing rules adequately address this concern. For the reasons set forth below, we are not permitting AMTS service to vehicles at this time. Consequently, we need not further address this issue.

5. A wide range of parties with interests in maritime communications vigorously opposed the proposal. These commenters included the U.S. Coast Guard, numerous barge and tow operators, vessel operators, the National Marine Electronics Association (NMEA), and the American Institute of Merchant Shipping. The Coast Guard and many other commenters argued that "significant and intolerable harmful interference to the VHF-FM maritime radio safety service could occur if land mobile users were permitted to install maritime VHF-FM radio equipment on land vehicles . . . "[3] These commenters also argue that there is no practical and enforceable method of ensuring that land mobile vehicles will restrict themselves to public correspondence frequencies, or AXat direct intervehicular communications will be avoided. Further, they point out that there would be no practical means to interrupt the transmission of land mobile messages in order to ensure maritime priority.[4]

6. Many maritime users point out that existing VHF-FM public correspondence stations are extremely congested, particularly in major port areas, and that whatever relief may eventually be provided by AMTS or cellular services has yet to be demonstrated. Furthermore, AMTS service has yet to become operational and the degree to which it can or should be permitted to accommodate land mobile service has not been demonstrated.

7. After careful consideration of all the comments we have concluded that rules permitting all VHF public coast stations to serve land mobile vehicles should not be adopted at this time. The conditions we had proposed were intended to ensure that the expansion of service would utilize public coast stations' excess capacity and not impact the stations' normal maritime communications. While we agree with WATERCOM and Midland in principle that public coast stations should be permitted to maximize capacity usage and revenue opportunities, we conclude that this field is not sufficiently homogenous to permit such services nationwide. For example, the comments point out that maritime frequencies in many areas of the country are already extremely congested. In other areas of the country however, lakes and rivers freeze over and other seasonal factors greatly affect capacity. We must also heed the comments of the Coast Guard and others about our ability to ensure that land mobile communications will not derogate maritime communications.[5] In safety services like the Maritime Service this consideration carries decisional weight.

8. Therefore, because public coast stations utilize frequencies allocated internationally to the Maritime Service and this safety service could suffer from harmful interference, we are not amending our rules as proposed. In light of our decision not to adopt rules which permit public coast stations to provide service to land mobile vehicles,

we need not reach the question of federal preemption of state regulation of public coast stations.[6] Having decided not to adopt rules, however, we recognize there may be cases where individual stations or systems of stations may have excess capacity on an hourly, daily or seasonal basis and could design a subsidiary service to vehicles which would ensure against interference to or derogation of maritime communications. Upon request, we will consider such cases for a waiver of the rules on an *ad hoc* basis.

9. For the reasons set forth above, IT IS ORDERED, That this proceeding IS TERMINATED.

10. IT IS FURTHER ORDERED, That a copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

11. Regarding questions on this matter contact Robert DeYoung at (202) 632-7175.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

APPENDIX A

COMMENTS

Broadcasting Interests

1. Gateway Communications, Inc.
2. K-Six Television, Inc.
3. Maximum Service Telecasters, Inc.

Maritime Interests

1. American Electric Power Service Corp.
2. American Institute of Merchant Shipping
3. Coast Guard, United States
4. Marine Telephone Co.
5. Midland Enterprises, Inc.
6. Mohr, Robert L.
7. National Marine Electronics Assn.
8. Northwest Instrument
9. Offshore Navigation, Inc.
10. Phillips Communications, Inc.
11. River Communications, Inc.
12. Tittle, Thomas W. d/b/a Burns Harbor Radio
13. "VHF Public Coast Station Licensees": Delcambre Telephone Co., Inc.; Harbor Communications, Inc.; Houser Communications, Inc.; Mobile Radio Communications, Inc.; Texoma Mobilfone, Inc.; Com/Nav Marine, Inc.; Cameron Telephone Company; and Mobile Telephone Service of Wheeling, West Virginia, Inc. (Jeremiah Courtney, Atty.)
14. Waterway Communications System, Inc.

Shipping Interests

1. Bangert, David J., Limited Leasing Company
2. Brewick, H.L., TPC Transportation Company
3. Develle, Louis J., III, Mississippi River Grain Elevator, Inc.
4. Franklin, Webb (Congressman)
5. Gunderson, Steve (Congressman)
6. Hubbard, Donald L., Hubbard Marine Service, Inc.
7. Lawson, Vance, Lawson & Lawson Towing Company, Inc.
8. Lirette, Gerald M., Coastal Radio & Radar Service, Inc.
9. Selvick, William C., Selvick Marine Towing
10 Trumball, Edward Jr., Trumball River Services, Inc.
11. Waxler, Billy T., Waxler Towing Company, Inc.
12. Williams, Donn L., Williams Marine Enterprise, Inc.

REPLY COMMENTS

Broadcasts Interests

1. KTVE, Inc.
2. Association of Maximum Service Telecasters, Inc.
3. Metropolitan Pittsburgh Public Broadcasting, Inc.
4. Octagon Broadcasting Co.
5. RKO General, Inc.
6. Storer Communications, Inc.
7. Wilson Communications, Inc.

Maritime Interests

1. National Marine Electronics, Assn.
2. Riverphone, Inc.
3. Waterway Communications System, Inc.

FOOTNOTES

[1] These conditions were: (a) the subsidiary service to be provided on a secondary basis to maritime radio services; (b) the costs or charges of maritime subscribers who do not wish to use the other communications services not be increased because of the subsidiary service offering; (c) the quality, growth or availability of the licensee's maritime service offerings not be materially diminished by the subsidiary service offering; (d) the subsidiary service does not violate or not be otherwise inconsistent with other Commission regulations or policies; and (e) the Commission be notified prior to the commencement of such subsidiary service.

[2] See *Report and Order* in CC Docket No. 80-57, 95 FCC 2d 769 (1983).

[3] *See* USCG comments at para. 2.

[4] We recently considered similar issues in the aviation service when we authorized administrative messages on aeronautical enroute frequencies on a secondary basis. *See* PR Docket 85-292 released August 5, 1986, FCC 86-324. Those messages, in contrast to the maritime public correspondence messages involved here, were data communications whose secondary priority was guaranteed by system design.

[5] In this connection, the request of some public coast station commenters to expand the scope of this proceeding to paging to land mobile units, and to putting subsidiary messages on a co-equal basis supports this point. Even in arguing for this

expansion in the scope of permissible communications, these commenters acknowledge the difficulty, if not the impossibility of distinguishing them.

[6] In footnote 3 in the Report and Order in CC Docket 85-89, released March 31, 1986, FCC 86-112 we expressly reserved this question. In light of this decision, the question is moot.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-484

In the Matter of

Reexamination of the Commission's
Comparative Licensing, Distress
Sales and Tax Certificate Policies
Premised on Racial, Ethnic or Gender
Classifications

NOTICE OF INQUIRY

Adopted: December 17, 1986 ; Released: December 30, 1986

By the Commission: Commissioner Quello issuing a separate statement.

INTRODUCTION

1. Over the past decade, the Commission has administered three regulatory policies designed to achieve diversity in broadcast programming by fostering an increase in the number of broadcast facilities owned by minority group members and women. These policies are, first, the application of racial, ethnic, and gender preferences in comparative licensing proceedings for broadcast stations; second, the administration of the Commission's distress sale policy to permit minority acquisition of broadcast stations designated for hearing on basic qualifications issues; and third, the issuance of tax certificates for sales of broadcast properties to minorities. This proceeding was prompted by concerns as to the continuing legality of these policies as a result of the *Steele* case[1] and several recent Supreme Court cases. The Commission asked for a remand in order to determine whether a record can be established that would support the constitutionality of its preference scheme. The Commission also has decided that this is an appropriate occasion to determine whether comparative preferences, distress sales and tax certificates are appropriate as a matter of policy.

BACKGROUND

A. Comparative Preference Policies for Minorities and Women.

2. In a comparative licensing proceeding, the Commission selects the applicant best able to serve the public interest. *See, e. g., Johnston Broadcasting v. FCC*, 175 F.2d 351 (D.C. Cir. 1949). To make this choice, the Commission has set out standard criteria to be considered in every comparative proceeding. *See Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965) [hereafter *1965 Policy Statement*]. The Commission explained in the *1965 Policy Statement* that there are two principal objectives on which it would focus in selecting among qualified applicants: (1) best practicable service to the public; and (2) maximum diffusion of control of the media of mass communications, generally referred to as diversification, in order to maximize diversity of programming. *Id.* at 394. *See generally West Michigan Broadcasting Co. v. FCC*, 735 F.2d 601, 603-07 (D.C. Cir. 1984), *cert. denied*, 105 S. Ct. 1392 (1985). Integration of ownership and management is the single most important factor in evaluating best practicable service. Certain qualitative attributes of participating owners, such as local residence, participation in civic activities and broadcast experience have been used to enhance integration credit. *Id.* at 395-96.

3. Minority and female ownership were not specifically addressed in the *1965 Policy Statement*. Instead, the Commission's current comparative preference policies had their origin in the Court of Appeals decision in *TV 9, Inc. v. FCC*, 495 F.2d 929 (D.C. Cir. 1973), *cert. denied*, 419 U.S. 986 (1974). *See also Garrett v. FCC*, 513 F.2d 1056 (D.C. Cir. 1975). In *TV 9*, the Court stated that "we hold that when minority ownership is likely to increase diversity of content, especially of opinion and viewpoint, merit should be awarded." The Court, however, reversed the Commission's decision that minority preferences should be granted only after the minority applicant demonstrated a nexus to program diversity. The court concluded that it could be assumed that minority ownership would foster program diversity when there is integration of ownership and management. It therefore found that the Commission should have awarded merit to the minority owner in *TV 9* without first requiring a demonstration of a nexus between minority ownership and increased program diversity.[2] In 1975 in *Garrett*, the court clarified its *TV 9* holding, stating that the "entire thrust of *TV 9* is that black ownership and participation together are themselves likely to bring about programming that is responsive to the needs of black citizenry and that 'reasonable expectation' without 'advance demonstration' gives them relevance." *Id.* at 1063. *See also West Michigan Broadcasting Co.*, 735 F.2d at 606-616. Based on these directives from the court, the Commission concluded that minority ownership and participation should receive credit in the comparative process; it decided to treat this factor as an enhancement to the standard comparative criterion of integration of management, an element used to evaluate which competing applicant is likely to provide the best practicable service to the public. *WPIX, Inc.*, 68 FCC 2d 381 (1978).[3]

4. In a subsequent decision, the Commission's Review Board applied the preference policy to women, concluding that "merit for female ownership and participation is warranted upon essentially the same basis as the merit given for black ownership and participation, but that it is a merit of lesser significance." *Mid - Florida Television Corp.*, 69 FCC 2d 607, 652 (Rev. Bd. 1978), *set aside on other grounds*, 87 FCC 2d 203 (1981). Finding the rationale of *TV 9* and *Garrett* applicable to women as well, the Board concluded that, if it were correct to assume that minority ownership promotes diversity, then the goal of diversification of programming would by the same logic likely be furthered by a policy that gives some comparative credit for female ownership of broadcast stations, given that women, like minorities, were infrequent owners of broadcast operations. However, based on the observation that women, unlike minorities, had not been "excluded from the mainstream of society" due to prior discrimination, the merit accorded integrated female ownership is of lesser weight than that awarded minority

ownership.[4] The Board followed the court's ruling in *TV 9* and did not require a showing of a nexus between female ownership and program diversity before awarding the preference.

5. Minority and female preference policies have been applied in numerous cases. In *Cannon's Point Broadcasting Co.*, 93 FCC 2d 643 (Rev. Bd. 1983), *reconsid. denied*, 94 FCC 2d 72 (Rev. Bd. 1983), *review denied*, FCC 84-161 (April 13, 1984), *appealed sub nom. Steele v. FCC*, No. 84-1176 (D.C. Cir. *motion for remand granted* Oct. 9, 1986), a comparative application proceeding for a new FM broadcast station, the Commission's Review Board found that, between two competing applicants, neither of whom owned any other media properties and both of whom were to be sole owner-operators of the station, the woman's qualitative enhancement credits for 100% female integration and past local residence prevailed over the nonminority male applicant with an enhancement for prior broadcast experience. The Commission affirmed this decision and the losing applicant appealed, challenging the constitutionality of the female preference policy.

6. A majority of a divided three-judge panel of the Court of Appeals held that the gender preference was invalid because it exceeded the Commission's statutory authority, *Steele v. FCC*, 770 F.2d 1192, 1199 (D.C. Cir. 1985), and it reversed the Commission's decision. The majority stated that the assumptions underlying the preference policies "run counter to the fundamental constitutional principle that race, sex, and national origin are not valid factors upon which to base government policy." *Id.* at 1198. The majority added:

> [T]he Commission has been unable to offer any evidence other than statistical underrepresentation to support its bald assertion that more women station owners would increase programming diversity. Instead, a few Commission employees without any evidence, reasoning, or explanation, gratuitously decreed one day that female preferences would henceforth be awarded. . . . Presumably, the Board thought that it was a Good Idea and would lead to a Better World. Contrary to the Commission's apparent supposition, however, a mandate to serve the public interest is not a license to conduct experiments in social engineering conceived seemingly by whim and rationalized by conclusory dicta.
>
> 770 F.2d at 1199.

7. The court, *en banc*, granted a rehearing and vacated the panel opinion in an order released October 31, 1985. In a subsequent order on November 22, 1985, the court asked the parties to file supplemental briefs addressing the Commission's statutory authority to grant gender-based preferences and the constitutionality of such grants. The Commission responded with a brief that expressed its concern that both the female and minority preference policies do not at present satisfy statutory and constitutional requirements, because the Commission had never undertaken a proceeding to determine whether there is a nexus between the preference scheme and enhanced diversity, but instead had assumed such a nexus. At the same time, the Commission sought a remand so that it could conduct such a proceeding. *Steele v. FCC*, No. 84-1176 (D.C. Cir. *motion for remand filed* Sept. 12, 1986). That motion was granted in an order released October 9, 1986.

B. Tax Certificate and Distress Sale Policies

8. Applying the reasoning of *TV 9* and in response to concerns raised in the Federal Communications Commission's Minority Ownership Task Force, *Minority Ownership Report* (1978), the Commission has adopted two additional minority ownership policies to encourage broadcasters to seek out minority purchasers. *Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979, 982-983 (1978). First, the Commission used its authority under 28 U.S.C. §1071 to grant tax certificates to assignors or transferors whose voluntary sales of their broadcast stations would increase minority ownership where it determined that "there is substantial likelihood that diversity of programming will be increased." *Id.* The Commission contemplated issuing tax certificates where minority ownership would be controlling, and it would consider issuing certificates in other cases where "minority ownership [would be] significant enough to justify the certificate in light of the purpose of the policy. . . ." *Id.* at 983 n.20.[5] Section 1071 authorizes the Commission to issue tax certificates whenever a sale of a broadcast property is found to be "necessary or appropriate to effectuate a change in policy of, or the adoption of a new policy by, the Commission with respect to ownership and control of radio broadcasting stations." Tax certificates allow the seller to defer capital gains taxation on the proceeds of the sale.

9. Second, the Commission extended its existing distress sale policy, which as originally adopted allowed incapacitated or bankrupt broadcasters to sell their stations, to include distress sales to prospective purchasers with significant minority ownership interests. *Id.* at 983. Under this policy, the Commission permits a licensee whose license or whose renewal application is designated for hearing on basic qualifications issues to transfer or assign its license to a qualified minority applicant at a distress sale price, if the sale occurs before the hearing is initiated and the parties "demonstrate how the sale would further the goals" underlying the policy. *Id.* The goals are described simply as "fostering the growth of minority ownership," *id.* at 982, because of the assumption in *TV 9* that minority ownership and participation in management can be expected to increase diversity of program content as well as diversity of control of the media. *Id.*[6]

10. The application of this distress sale policy is the subject of a pending appeal in *Shurberg Broadcasting of Hartford, Inc. v. FCC*, No. 84-1600 (D.C. Cir. *supplemental brief ordered* Sept. 18, 1986). Recognizing that the minority distress sale policy may implicate some of the same statutory and constitutional concerns as the comparative preference policy in *Steele*, the Commission asked the court to remand *Shurberg* for further Commission consideration after the Commission's Motion for Remand of the *Steele* case was granted. The Motion for Remand, filed October 23, 1986, is pending before the court.

11. The minority tax certificate policy, adopted in the same decision as the distress sale policy, was premised on the same diversity assumption, and therefore must necessarily be addressed in the instant proceeding.

C. *Commission Concerns*

12. The Commission adopted its policies fostering minority ownership and applied racial and gender preferences in comparative hearings to respond to the court's mandates in *TV 9* and *Garrett*, *supra*, that the FCC should assume that minority ownership affects content diversity. Thus, in compliance with the court's holdings, the Commission has applied its comparative policy solely on the basis of the amount of minority or female ownership reflected in management. Likewise, the Commission, in its *Policy on Minority Ownership of Broadcasting Facilities*, *supra*, based its distress sale and tax certificate decisions on the nature of the minority interests, *i.e.*, whether they were controlling.

13. As indicated previously, the Surpreme Court decided several cases involving affirmative action programs that may implicate the Commission's comparative preference, minority distress sale and minority tax certificate programs. *See, e.g., Wygant v. Jackson Board of Education*, 90 L. Ed. 2d 260 (1986); *Fullilove v. Klutznik*, 448 U.S. 448 (1980); *Regents of University of California v. Bakke*, 438 U.S. 265 (1978). *See also Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982) ("heightened scrutiny" applied to gender-based classifications). Although these cases are primarily concerned with quota or set-aside affirmative action remedies for past discrimination,[7] collectively these cases at a minimum establish the proposition that classifications based on race or sex are inherently suspect, presumptively invalid, and subject to strict or heightened scrutiny. Because there is no factual predicate against which to apply such cases, the Commission has initiated this proceeding to reexamine its policies based on racial or gender classifications and preferences.

14. As stated previously, the purpose behind each of these policies has been to expand program diversity. We find program diversity compelling governmental interest within the Commission's authority. Although we do not interpret the Supreme Court opinions to preclude consideration of race or gender in the licensing process under all circumstances, we do read these cases to mean that the use of minority/gender status must include a determination of whether their use is necessary and narrowly tailored to achieve their goals. The Commission's brief concluded, in response to the *Steele* court's questions, that racial or gender classifications may not be based on the assumption alone that integrated minority/female owners will result in increased content diversity. The Commission concluded, therefore, that an inquiry should be conducted to reexamine the legal and factual predicates of our policies. To this end, we seek to determine whether there is a nexus between minority/female ownership and viewpoint diversity, and whether such ownership is necessary to achieve this goal. The questions that follow are designed to elicit evidence on these points. They are also designed to focus attention on the effectiveness of these policies in achieving their intended goals and on other alternatives the Commission might or should consider. We also seek to determine whether, as a matter of policy, these preference schemes should be retained.

SPECIFIC QUESTIONS AND REQUEST FOR COMMENTS

I. THE CONSTITUTIONALITY OF THE POLICIES

15. The overarching question that must be addressed is, of course, whether the preference, distress sale, and tax certificate policies as presently constituted and administered are constitutional. In addressing this question, commenters should submit analyses of relevant case law in support of their reasoning and specific data to support their factual conclusions. In the course of this analysis, particular consideration of the questions outlined below also will be helpful.

16. The "strict scrutiny" test applied in cases involving race classifications and the heightened scrutiny test applied in gender classifications require that government actions be premised on a clearly established factual record. Furthermore, in assessing the constitutionality of race or gender-conscious remedies, courts have required that the remedy chosen be "narrowly tailored" to achieve the government's legitimate, articulated purpose. In assessing these issues, commenters should focus on the following questions.[8]

a. Is a demonstrated relationship between minority/female ownership and minority/female-oriented programming necessarily required as a matter of law to support the constitutionality of the Commission's comparative preference, distress sale, and tax certificate policies? If not, please cite relevant case law in support of this position. Are there any circumstances under which such a relationship can be presumed? On what basis? May the Commission rely upon reasonable expectation or its own expert judgment on these matters, even in part? Is increased minority or female ownership in and of itself a sufficient governmental interest and does it pass constitutional muster?

b. To what extent is the relationship between integrated minority/female ownership and increased availability of minority/female perspectives and programming empirically demonstrable? Is there, for example, a demonstrable difference in the amount or nature of minority-oriented programming broadcast by minority-owned stations and that broadcast by nonminority-owned stations under similar market conditions, such as where there is a significant minority population? How should minority or female-oriented programming be defined for purposes of this analysis? Do these definitions apply to all media?

c. Is the evidence relating to the nexus between ownership and programming any different when minority and female ownership are combined with significant management roles, as is required under the comparative preference policy, as contrasted with ownership that is not integrated into management, as is permitted under the tax certificate and distress sale policies?

d. The Supreme Court precedent suggests that a higher level of scrutiny may apply to race-based classifications than to gender-based classifications. If that is true, what is the effect of this difference on the constitutionality of our policies?

17. Equal protection concerns generally require that there be no reasonable way to achieve the state's goals by means of imposing a lesser limitation on the rights of the group disadvantaged by the classification.

a. Are there effective means of achieving increased program diversity that do not require the use of race/gender classifications? For example, to what extent do market forces independently produce a mix of programming serving the varied needs and interests of broadcast audiences?

b. Should the Commission continue to grant preferences to minorities and women in comparative licensing proceedings, but permit nonminorities and men to overcome such preferences by making a showing that they will make an equal or superior contribution to diversity? Would this affect the constitutionality of the policy? How could such showings be made? Should the tax certificate and distress sale policies be similarly altered?

c. Should the Commission, for example, return to its original position in the *TV 9* case, under which all applicants seeking a diversity preference make individual showings to demonstrate a specific contribution to program diversity? Should this showing be open to any individual or limited to minorities and women? Should an analogous approach for distress sales and tax certificates be adopted? Is there a way for the Commission to evaluate such individual showings without having to directly analyze program content, for example, by linking any preference to demonstration of past involvement with minority/female issues which may be a more reliable indicator than race or gender *per se* ?

d. If race and gender classifications are used in the Commission's ownership policies, how long should they be employed? What monitoring mechanisms should be used? What are the First Amendment ramifications of any such monitoring? If a demonstrable nexus is found, is the comparative process constitutional as presently administered? Distress sales? Tax certificates?

e. Please comment upon the Commission's present practice of granting integrated female owners an enhancement of lesser weight than that granted integrated minority owners in the comparative process. Is there an adequate constitutional basis for these gradations of enhancement? Is there a factual basis for these gradations of enhancement relevant to the Commission's public interest mandate?

Significance of Legislative History of Lottery Statute

18. In enacting the lottery licensing provisions of Section 309(i) of the Communications Act in 1982, Congress explicity incorporated a mandatory minority preference scheme. In connection with that enactment and in other proceedings, Congress has made various statements that relate ownership diversity to diversity of programming and that find a substantial underrepresentation of minorities and women among owners of mass media. Parties are invited to comment on the referenced Congressional record as a basis, in constitutional terms, for Commission action in continuing to apply the subject ownership policies. We solicit comment on whether the Commission is bound by, or may rely upon, Congressional findings of constitutionality, until directed otherwise by a court, or whether the Commission must independently assess the constitutional issues.

II. EFFECTIVENESS OF CURRENT POLICIES AND ALTERNATIVES

19. In re-evaluating the existing policies, it is necessary to ascertain the extent to which they have been effective. For this purpose, interested parties are asked to address the following questions.

a. To what extent have the subject policies resulted in minority and female ownership? Is there anything in the comparative process that acts as a barrier to the entry of minorities and women into broadcasting? In practice, have integration proposals been carried out? How long have owners benefiting from the policies continued their ownership roles? Has the number of minority and female-owned stations increased, and by how much, since the adoption of each policy? What percentage of stations have been acquired by utilizing these policies?

b. What are the major impediments to increasing minority ownership of the broadcast media? Does financing continue to be substantial problem? To what extent is lack of information on ownership opportunities a problem? What part might the Commission play in eliminating these and other extrinsic problems?

c. What social or other costs might result from continuing these policies? Are these costs outweighed by the benefits to be derived from continuing these policies?

20. Commenters are invited to respond to the above questions and to address any other matters raised herein or that the parties deem relevant to a careful reexamination of the subject policies. We encourage parties to submit empirical evidence and hard data wherever possible to support their positions. Where such evidence or data is filed, parties should describe fully the methodolgy utilized in its compilation and analysis. Parties submitting comments on the constitutional issues presented in the Commission's brief in *Steele* or in this *Notice* are requested to include citations to relevant statutes and case law. Finally, we request that parties identify the question to which they are responding in their comments.

PROCEDURAL MATTERS

21. Authority for this *Notice of Inquiry* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended. Pursuant to applicable provisions set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before May 7, 1987, and reply comments on or before July 6, 1987. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Reply comments shall be served on the person(s) who filed comments to which the reply is directed.

22. It is our intention at the conclusion of this inquiry proceeding to adopt a final policy statement. Therefore, for purposes of this nonrestricted notice of inquiry pro-

ceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of inquiry until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation. That written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally*, Section 1.1231 of the Commission's Rules, 47 C.F.R. Section 1.1231. Parties are advised, however, that the specific proceedings involved in the *Steele* and *Shurberg* cases are restricted adjudicatory proceedings and remain subject to the strict *ex parte* provisions of Section 1.1203, *et seq*. of our rules, 47 C.F.R. Section 1.1203, *et seq*.

23. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and 5 copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished to the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the heading. All filings in this proceeding will be available for public inspection by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 "M" Street, N.W., Washington, D.C. 20554.

24. In view of the fact that we have asked the court to remand the *Steele* case, because of doubts as to the constitutionality of the minority and female enhancement credits, and more particularly, in view of the fact that we are holding that case in abeyance pending completion of this proceeding, we believe it might be arbitrary and capricious to continue to award licenses in other comparative licensing proceedings where the effect of such credits is dispositive. We, therefore, are directing administrative law judges to make findings as to all issues in dispute, including entitlement to a racial/gender preference, and to hold in abeyance all decisions where such credits are dispositive. We see no need, however, to delay action on cases the outcome of which would not be affected by awards of such preferences. Thus, an administrative law judge hearing a comparative licensing case in which a minority/female credit is claimed should make findings and reach conclusions based on application of these credits and, in the alternative, should determine which applicant would prevail if the credits were disallowed. If the credit would not be dispositive, the case should be decided. If, on the other hand, award of the credit would be dispositive, the case should be held in abeyance pending final resolution of this proceeding. The Review Board and Office of General Counsel are also directed to hold in abeyance any cases within their purview where such credits are dispositive.

25. Similarly, because the Commission has requested that the Court of Appeals remand *Shurberg* for reconsideration, and is now holding that application in abeyance pending completion of this docket, the Mass Media Bureau will hold in abeyance all other pending or future applications for distress sales pursuant to the minority ownership policy until such time as a decision in the *Shurberg* proceeding has become final. In the event the Court decides not to grant a remand, applications should be held until the court disposes of the case on the merits; in the event a remand is granted, applications should be held pending the final resolution of this proceeding.

26. Although the Commission's tax certificate policy raises some of the same questions as the award of race or gender-based credits in comparative licensing proceedings and the grant of distress sale relief, the Commission has not been presented with a specific case challenging that policy and has had no occasion to consider the validity of that policy. Unlike the comparative preference and distress sale cases, no specific tax certificate application is being held in abeyance. Therefore, we are not constrained by the same equitable considerations present in comparative licensing and distress sale cases to hold pending and future tax certificate requests in abeyance. Accordingly, in the event an application for a tax certificate is filed,[9] the Bureau, unless otherwise directed by the Commission, should process the request and grant the tax certificate, if warranted.

27. Accordingly, IT IS ORDERED, That in all comparative licensing cases where a racial, ethnic or gender preference would be awarded in the absence of concerns as to the constitutionality of those preferences, the presiding administrative law judge (after having made findings as to all disputed issues of fact), the Review Board, or the Office of the General Counsel, as the case may be, SHALL DETERMINE whether award of the preference would be dispositive of the outcome of the proceeding and, if so, SHALL DEFER action on such cases pending final resolution of this proceeding.

28. IT IS FURTHER ORDERED, That the Mass Media Bureau SHALL HOLD IN ABEYANCE all applications for preferential treatment under the Commission's distress sale policy pending the earlier of (a) a final judicial determination upholding the validity of the distress sale policy or (b) the final resolution of this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

FOOTNOTES

[1] *Steele v. FCC*, Case No. 84-1176 (D.C. Cir. *motion for remand granted* Oct. 9, 1986).

[2] For the Commission's decision, see *Mid - Florida Television Corp.*, 33 FCC 2d 1, 17-18 (Rev. Bd.), *rev. denied*, 37 FCC 2d 559 (1972). Unless modified otherwise, references to "diversity" herein refer to program diversity.

[3] The *TV 9* opinion and supplemental opinion were careful to point out the difference between a "preference," which the court viewed as determinative *per se*, and an "enhancement" or "merit," which was not. The Commission's implementation of the *TV 9* order in the *WPIX* case was intended to observe this distinction. For ease of discussion herein, the term "preference" shall be deemed to encompass both enhancement and merit, without legal distinction.

[4] *Mid - Florida*, *supra* at 652.

[5] *See Policy Regarding the Advancement of* Minority Ownership in Broadcasting, Gen. Docket No. 82-797, 92 FCC 2d 849 (1982), regarding the availability of tax certificates for limited partnerships and "start-up" financing.

[6] In a Notice of Inquiry in MM Docket No. 85-299, the Commission proposed to permit distress sales of broadcast properties to minorities after a revocation or renewal hearing has commenced, provided the transaction is entered into prior to the filing of proposed findings of fact and conclusions of law and the sale price is no more than 50 percent of the fair market value. Distress Sale Policy for Broadcast Licenses, 50 Fed. Reg. 42047 (1985). Because the issues there will be affected by the Commission's decision in this proceeding, we will hold in abeyance our consideration of MM Docket No. 85-299 until this proceeding is concluded.

[7] In Bakke, Justice Powell addressed the University's interest in selecting a diverse student body. 438 U.S. at 315.

[8] Commenters should be as specific as possible in presenting data supporting their responses. We encourage parties to submit original empirical studies to support their positions. Where such analyses are submitted, the methodologies employed should be described in detail. Studies submitted should attempt to control for other factors which may also affect viewpoint diversity, such as market size or demographic characteristics. We recognize, of course, that not all of these questions raise issues that are susceptible to empirical study, but for those that are, we would ask commenters to submit the best data available.

[9] At the moment, there are no pending requests for issuance of tax certificates premised on the sale of licensed facilities to a minority or minority-controlled group.

SEPARATE STATEMENT BY COMMISSIONER JAMES H. QUELLO

Re: Inquiry into the Commission's Comparative Licensing, Distress Sales and Tax Certificate Policies

Today the Commission launches an inquiry into its comparative licensing, distress sales and tax certificate policies. The primary focus of this inquiry is on the legality of those policies. However, the Commission has also decided that this is an appropriate occasion to assess the success of those policies during the eight years since their adoption. I support these efforts because I believe that both are necessary and proper concerns to the Commission's fulfillment of its public interest obligations.

As I have emphasized before, I remain committed to the Commission's longstanding goal of encouraging and assisting minority and female entry into broadcasting. I have also stated, on other occasions, that I am not inclined to question the wisdom of continuing our minority policies if they are constitutional. To the extent that this Notice of Inquiry contains conclusory statements relating to the legality of our policies, I am not necessarily in accord with those statements and will reserve judgment until I have a record before me. I cannot quarrel, however, with my colleagues' desire to seek comment on whether these policies are indeed accomplishing the worthy objectives that they were designed to achieve. I do, however, place a heavy burden on those that challenge either the constitutionality or the wisdom of our longstanding Commission policy of minority preferences. I intend to study this record very closely before reaching any conclusions on these sensitive issues.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-455

Amendment of Section 73.202(b),	RM-5088
Table of Allotments,	RM-5337
FM Broadcast Stations.	
(Crestview, Florida,	
Andalusia and Brantley,	
Alabama)	

NOTICE OF PROPOSED RULE MAKING

Adopted: November 19, 1986 Released: December 31, 1986

By the Acting Chief, Policy and Rules Division:

1. The Commission herein considers two separately filed petitions for rule making. The first, filed by Crestview Broadcasting Company ("CBC"), licensee of Station WAAZ-FM, Crestview, Florida, seeks to substitute Channel 284C2 for Channel 285A, and to have its license modified to specify the new channel. To provide for the upgrade, CBC has requested that Channel 262A be substituted for unused Channel 284A at Andalusia, Alabama. [1] The second petition was filed by Stewart Marsh and Virgil Leon Strickland, proposing to substitute Channel 279A for unused Channel 284A at Andalusia, and allot Channel 262A to Brantley, Alabama, as a first FM service.

2. In support of the proposal, CBC states that a Class C2 facility at Crestview will enable Station WAAZ-FM to improve the quality of its signal within its coverage area as well as provide new service. We are also told by CBC that Channel 262A at Andalusia can be used at the site chosen by the two applicants for Channel 284A, and still meet the spacing requirements. Marsh and Strickland contend that Channel 279A at Andalusia would likewise meet the spacing requirements, thus providing an opportunity for first local service on Channel 262A at Brantley. However, a staff engineering study indicates that Channel 279A at Andalusia would be short spaced to the buffer protection of four pending applications for Class C Channel 278. [2] These applications should be afforded the same buffer protection (16 kilometers) as Class C stations (as well as construction permits) in operation before March 1, 1984. If a construction permit is granted as a result of one of the above applications for Channel 278, the permittee will have an opportunity (until March 1, 1987) to become a full Class facility. However, we shall nevertheless propose to allot Channel 279A to Andalusia and give the applicants for Channel 278 an opportunity to indicate their plans to upgrade to Class C status or to accept a site restriction (ranging from 2 to 6 kilometers) in order to eliminate the short spacing. The applicants for Channel 278 are requested to submit comments in this proceeding stating their willingness in this regard.

3. We feel that these proposals warrant consideration. Therefore, we shall propose to substitute Channel 279A for unused Channel 284A at Andalusia and allot Channel 262A to Brantley as a first local service. As an alternative we shall propose to substitute Channel 262A for (unused) Channel 284A at Andalusia, Alabama, and to substitute Channel 284C2 for Channel 285A at Crestview, Florida, and modify the Crestview licensee for Station WAAZ-FM to specify the Class C2 channel. Pursuant to the recent amendment to the Commission's Rules, Section 1.420(g), the modification at Crestview can be implemented without providing the opportunity for additional expressions of interest in the allotment at Crestview. *See Modification of FM Broadcast Licenses to Higher Class Adjacent and Co-Channels*, MM Docket No. 85-313, 51 FR 20290, June 4, 1986. The proposals for Andalusia and Brantley, Alabama, can be made in compliance with the minimum distance separation requirements. However, the allotment of Channel 284C2 to Crestview is restricted to one (1) kilometer (0.6 miles) northeast of the city to avoid short spacing to Station WIZD(FM) (Channel 281), Atmore, Alabama.

4. In view of the above, the Commission considers it appropriate to solicit comments on alternate revisions to the FM Table of Allotments, Section 73.202(b) of the Rules, with respect to the communities listed below:

OPTION I

	Channel No.	
City	Present	Proposed
Andalusia, Alabama	251, 284A	—
Brantley, Alabama	—	262A
Crestview, Florida	285A	—

OPTION II

Andalusia, Alabama	251, 284A	251, 279A
Brantley, Alabama	—	262A
Crestview, Florida	285A	284C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attaohed Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before February 23, 1987, and reply comments on or before March 10 , 1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Kenneth E. Satten
Wilkinson, Barker, Knauer and Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006
(Counsel for Crestview
Broadcasting Company)

Virgle Leon Strickland
P.O. Box 116
Enterprise, Alabama 36331
(Petitioner for Brantley, Alabama)

7. IT IS ORDERED, That the Secretary SHALL SEND a copy of this *Notice* by Certified Mail, Return Receipt Requested, to the applicants for Channel 284A, Andalusia, Alabama, as follows:

Miller and Fields, P.C.
1019 - 19th Street, N.W.
Post Office Box 33003
Washington, D.C. 20033
(Attorneys for Companion
Broadcasting Service, Inc.)

Michael Purnell
Jackson - Purnell Broadcasting Co.
Post Office Box 53
Red Level, Alabama 36474

Copies should also be sent to the applicants for Channel 278, Springfield and Callaway, Florida, as follows:

Martin Intermart, Inc.
522 Park Street
Post Office Box 2696
Jacksonville, Florida 32203
(Applicant for Springfield, Florida)

Warmac Communications, Inc.
Post Office Box 1054
Panama City Beach, Florida 32401
(Applicant for Springfield, Florida)

Bible Broadcasting Systems, Inc.
166 South Highway 79
Panama City Beach, Florida 32407
(Applicant for Springfield, Florida)

Betty F. Martin
2818 Agnes Scott Drive
Panama City, Florida 32405
(Applicant for Callaway, Florida)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed. Reg. 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested

parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied' by a certificate of service. .(See Section 1.420(a), (b) and (c) of the Commission s Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTES

[1] The applicants for Channel 284A at Andalusia are: Companion Broadcasting Service - (BPH-840919JC) Jackson-Purnell Broadcasting Company (BPH-841228MG)

[2] The applicant for Channel 278 at Callaway is: Betty F. Martin (BPH-830215AI) and the applicants for Channel 278 at Springfield are:

Martin Intermart, Inc. - BPH-830215AG
Warmac Communications, Inc. - BPH-820927AF
Bible Broadcasting Systems, Inc. - BPH-830215AF

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-452

Amendment of Section 73.202(b),	RM-5448
Table of Allotments,	
FM Broadcast Stations.	
(Sherman, Texas)	

NOTICE OF PROPOSED RULE MAKING

Adopted: November 14, 1986 Released: December 31, 1986

By the Acting Chief, Policy and Rules Division:

1. The Commission has before it for consideration a petition for rule making filed by KTXO, Inc. ("petitioner"), seeking the allotment of Channel 281A to Sherman, Texas, as that community's second FM service. Petitioner has stated an intention to apply for the channel, if allotted.

2. The channel can be allotted in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.6 kilometers (4.7 miles) northeast of Sherman. The site restriction is necessary to avoid a short spacing to Station KVIL-FM, Channel 279, at Highland Park-Dallas, Texas.

3. In view of the fact that the proposed allotment could provide a second FM channel to Sherman, Texas the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules for the following community:

	Channel No.	
City	Present	Proposed
Sherman, Texas	244A	244A, 281A

4. Interested parties may file comments on or before February 23 1987 and reply comments on or before March 10 ,1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Vincent J. Curtis, Jr., Esquire
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(counsel to petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed. Reg. 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Acting Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed

later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied' by a certificate of service. .(See Section 1.420(a), (b) and (c) of the Commission s Rules.)

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-454

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Frostburg, Maryland) — RM-5499

NOTICE OF PROPOSED RULE MAKING

Adopted: November 20, 1986 Released: December 31, 1986

By the Acting Chief, Policy and Rules Division:

1. The Commission has before it for consideration the petition for rule making filed by He's Alive, Inc. ("petitioner"), requesting the allotment of FM Channel 246A to Frostburg, Maryland. Petitioner also requests that the channel be reserved for noncommercial educational use. He's Alive, Inc. stated its intention to apply for the channel if it is reserved for noncommercial use.

2. He's Alive, Inc., in support of its request, states that none of the 20 reserved noncommercial educational channels are available for use in the Frostburg area, and if the community is ever to have an additional educational channel, the allocation must come from one of the non-reserved commercial channels. According to petitioner the noncommercial educational frequencies are unavailable due to the proximity of Station WJAC-TV, Channel 6, Johnstown, Pennsylvania, and other nearby noncommercial educational stations. A staff engineering study confirms that, using the center city coordinates for Frostburg, Maryland, any of the 20 noncommercial educational channels would be within the Grade B contour of Station WJAC-TV, Johnstown, Pennsylvania. Section 73.525(a)(1) of the Rules requires a minimum of 154 kilometers distance to avoid interference to television Channel 6. FM Channel 220 is the only noncommercial channel which comes close to that requirement and it is 75 kilometers short of the required 154 kilometer separation. However, since no reserved channels are available for use at Frostburg, the allocation and reservation of a commercial channel is the only way to provide a second noncommercial educational station for the Frostburg area. The Commission has in similar situations reserved a commercial frequency for noncommercial educational use. See, *Comobabi, Arizona*, 47 FR 32717, July 29, 1982, and *Burlington and Newport, Vermont*, 45 R.R. 2d 786 (1979).

3. Channel 246A can be allocated to Frostburg, Maryland, in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules. Since the allotment of FM Channel 246A to Frostburg is within 320 kilometers (200 miles) of the common U.S.-Canadian border, concurrence of the Canadian government is required.

4. In view of the above, the Commission believes it is in the public interest to seek comments on the proposal to allocate Channel 246A to Frostburg, Maryland, and reserve the channel for noncommercial educational use. The allotment could provide a second noncommercial educational service to Frostburg. Accordingly, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below:

	Channel No.	
Community	Present	Proposed
Frostburg, Maryland	287	*246A, 287

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before February 23, 1987, 1987, and reply comments on or before March 10, 1987 , and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Lee J. Peltzman
Baraff, Koerner, Olender & Hochberg, P.C.
2033 M Street, N.W. - Suite 203
Washington, D. C. 20036
(Counsel for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Acting Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments ; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. *Public Inspection of* Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-453

Amendment of Section 73.202(b), RM-5585
Table of Allotments,
FM Broadcast Stations.
(Bennington, Nebraska)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 20, 1986; Released: December 31, 1986

By the Chief, Allocations Branch:

1. The Commission has before it a petition for rule making submitted on behalf of John Tynan ("petitioner") requesting the allocation of Channel 227A to Bennington, Nebraska, as the community,s first local FM service. Petitioner states that it will apply for the channel, if allocated. Channel 227A can be allocated to Bennington in compliance with the Commission's minimum distance separation and other technical requirements with a site restriction of 1.8 kilometers (1.1 miles) east to avoid a short-spacing to Station KKYA, Channel 226, Yankton, South Dakota. The allotment is also contingent upon Station KDWZ, Channel 227, Des Moines, lowa, being licensed at the transmitter site and with the increased facilities specified in its construction permit (BPH-830906AF).

2. We believe the public interest would be served by proposing the allocation of Channel 227A to Bennington since it could provide the community with its first local FM service. Accordingly, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Bennington, Nebraska	–	227A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before February 23, 1987, and reply comments on or before March 23 , 1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James E. Price
Sterling Communications, Inc.
P.0. Box 80484
Chattanooga, Tennessee 37411-7484
(Consultant to Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certificationthat Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied' by a certificate of service. .(See Section 1.420(a), (b) and (c) of the Commission s Rules.)

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-470

Amendment of Section 73.202(b),	RM-5440
Table of Allotments,	
FM Broadcast Stations.	
(Lake Lorraine, Florida)	

NOTICE OF PROPOSED RULE MAKING

Adopted: November 20, 1986 Released: December 31, 1986

By the Chief, Allocations Branch:

1. The Commission herein considers a petition for rule making filed by Michael J. Pollack ("petitioner"), seeking the allotment of Channel 227A to Lake Lorraine, Florida, as that community's first FM service. Petitioner indicates that he will apply for the channel, if allocated.

2. A staff engineering study reveals that Channel 227A can be allotted to Lake Lorraine, Florida, in compliance with the minimum distance separation requirements of Section 73.207 of the Rules.

3. In view of the fact that the proposal could provide a first local FM service to Lake Lorraine, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Lake Lorraine, Florida	—	227A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before February 19, 1987, and reply comments on or before March 6. 1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Lewis I. Cohen
Cohen and Berfield, P.C.
1129 - 20th Street, N.W.
Washington, D.C. 20036
(Counsel to Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 Fed. Reg. 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.

(See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied' by a certificate of service. .(See Section 1.420(a), (b) and (c) of the Commission s Rules.)

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-469

Amendment of Section 73.202(b), RM-5485
Table of Allotments,
FM Broadcast Stations.
(Hilton Head Island, South Carolina)

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: November 20, 1986 Released: December 31, 1986

By the Acting Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Jesse N. Williams, Jr. ("petitioner") requesting the substitution of Channel 291C2 for Channel 288A and the substitution of Channel 300A for Channel 292A at Hilton Head Island, South Carolina. Petitioner, permittee of a new station on Channel 288A at Hilton Head Island, also requests the modification of its permit to specify operation on the higher powered channel.[1] He states that he will promptly file an application specifying the new facilities should the channel be allocated.

2. Channel 291C2 can be allocated to Hilton Head Island in compliance with the Commission's minimum distance separation requirements with a site restriction of 28.8 kilometers (17.9 miles) north to avoid a short-spacing to Station WIXV, Channel 238 at Savannah, Georgia.[2] Channel 292A at Hilton Head Island is licensed to Station WHHR. Channel 300A can be allocated to Hilton Head Island and used at Station WHHR's present location contingent upon the grant of a license to Station WKOB, Channel 298 at St. George, South Carolina, specifying Class C facilities for which a construction permit is outstanding. Petitioner states that he will reimburse Station WHHR for the reasonable costs involved in changing frequency. In view of this contingency neither of the channel substitutions requested herein can be effectuated until the St. George license is issued.

3. As requested, we shall propose to modify petitioner's permit to specify operation on Channel 291C2. In view of the action taken in MM Docket 85-313, 51 FR 20290, June 4, 1986, it is no longer necessary to demonstrate the availability of an additional equivalent channel in this type of proceeding. See Section 1.420(g) of the Commission's Rules.

4. In view of the fact that the proposed allotment could provide Hilton Head Island with a wide coverage area service, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Hilton Head Island, South Carolina	288A, 292A	291C2, 300A

5. IT IS ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, Hilton Head Broadcasting Corp., the licensee of Station WHHR, Hilton Head Island, South Carolina, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 300A in lieu of Channel 292A.

6. Pursuant to Section 1.87 of the Commission's Rules, Hilton Head Broadcasting Corp. may, not later than February 19, 1987, request that a hearing be held on the proposed modification. If the right to request a hearing is waived, Hilton Head Broadcasting Corp. may, not later than February 19, 1987, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on Hilton Head Broadcasting Corp. to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an Order modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Hilton Head Broadcasting Corp. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final Order will be issued by the Commission, if the above-mentioned channel modifications are ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Hilton Head Broadcasting Corp.
Station WHHR
P.O. Box 3110
Hilton Head Island, South Carolina 29928

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before February 19, 1987, and reply comments on or before March 6 , 1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Jerrold Miller, Esq.
Miller & Field, P.C.
P.O. Box 33003
Washington, D.C. 20033
(Counsel to petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604*

of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 2O2 (b), 73. 504 and 73. 606 (b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Acting Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments ; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. *Public Inspection of* F il ings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTES

[1]. Petitioner, one of sixteen applicants for Channel 288A at Hilton Head Island, was awarded the construction permit in the Initial Decision of Administrative Law Judge Joseph Stirmer, released May 31, 1984, FCC 84D-38. The decision was upheld, in pertinent part, in separate decisions by the Review Board and Commission. See *Decision,* released December 7, 1984, FCC 84R-87, *Memorandum Opinion and Order,* released January 3, 1986, FCC 86-667. Three of the parties seeking the construction permit, Plantation Broadcasting Corporation, Heritage Broadcasting Corporation, and Women's Broadcasting Coalition, Inc., have filed an appeal of the denial of their applications to the U.S. Court of Appeals for the District of Columbia Circuit. Therefore, since the petitioner's interest is dependent on a favorable decision, final action herein may be contingent upon the outcome of the appeals.

[2] Station WIXV has been granted a construction permit (BPH-851020IF) to move its transmitter site and operate with Class C1 facilities. Should a license be issued specifying the new location and changed facilities, the allocation of Channel 291C2 at Hilton Head Island would only require a 4.1 kilometer (2.6 mile) east site restriction.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-474

Amendment of Section 73.202(b),	RM-5438
Table of Allotments,	
FM Broadcast Stations.	
(Marietta, Ohio and Ravenswood,	
West Virginia)	

NOTICE OF PROPOSED RULE MAKING

Adopted: December 4, 1986 Released: December 31, 1986

By the Acting Chief, Policy and Rules Division:

1. The Commission has before it a petition for rule making filed by Employee Owned Broadcasting Corp., ("petitioner"), licensee of Station WEYQ-FM, Channel 271A at Marietta, Ohio, requesting the substitution of FM Channel 271B1 for Channel 271A at Marietta and the modification of its license to specify operation on the new frequency.[1] In order to accomplish this substitution, Channel 291A must be substituted for unused but applied for Channel 272A at Ravenswood, West Virginia.[2] Petitioner submitted information in support of its proposal and expressed an intention to apply for the channel.

2. We believe the petitioner's proposal warrants consideration. Channel 271B1 can be substituted for Channel 271A at Marietta in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.1 kilometers (11.2 miles) southwest of the community in order to avoid a short spacing to Station WVAQ(FM), Channel 270B, Morgantown, West Virginia.

3. Since Marietta is located within 320 kilometers (200 miles) of the U.S.-Canadian border, the proposal requires concurrence by the Canadian government.

4. We shall propose to modify the license of Station WEYQ-FM to specify operation on Channel 271B1. In accordance with our established policy we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel pursuant to Section 1.420(g). See *Modification of FM Broadcast Licenses to Higher Class Co - channel of Adjacent Channels*, 51 FR 20290, June 4, 1986.

5. In view of the fact that Marietta, Ohio, could receive its first wide coverage FM station, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Rules. with regard to the following communities:

	Channel No.	
City	Present	Proposed
Marietta, Ohio	271A	271B1
Ravenswood, West Virginia	272A	291A

6. IT IS ORDERED, That the Secretary SHALL SEND a copy of this *Notice* BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Franklin Broadcasting Co., 237 Western Blvd., Jacksonville, NC 28540.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before February 19, 1987, and reply comments on or before March 6, 1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

J. Dominic Monahan, Esq.
Brian E. Keating, Esq.
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037
(Counsel to petitioner)

Employee Owned Broadcasting
910 Penn Post Office Box 329
Marietta, OH 45750
(Petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 Fed.* Reg. 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Acting Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTES

[1] The request was initially submitted as a counterproposal in MM Docket No. 86-107, RM-5007 (51 FR 12178, April 9, 1986), in which the Commission substituted Channel 230B1 for Channel 269A at Saint Marys, West Virginia and substituted Channel 271A for Channel 232A at Marietta and modified petitioner's license accordingly.

[2] Franklin Broadcasting Company has an application pendin for Channel 272A at Ravenswood, West Virgin (BPH850712Q5).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-471

Amendment of Section 73.202(b),	RM- 5580
Table of Allotments,	
FM Broadcast Stations.	
(Douglas, Arizona)	

NOTICE OF PROPOSED RULE MAKING

Adopted: November 28, 1986 Released: December 31, 1986

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of KDAP,Inc. ("petitioner"), licensee of Station KDAP(AM), Douglas, Arizona, seeking the allotment of channel 243A to that community as its second local FM service. Petitioner has provided the requisite intent to apply for the channel if allotted.

2. Channel 243A can be allotted to Douglas in conformity with the minimum distance separation requirements of Section 73.207 of the Commission's Rules. Additionally, since Douglas is located within 320 kilometers (199 miles) of the U.S.-Mexico border, the Commission must obtain concurrence of the Mexican Government in the proposal.

3. In view of the above, and in order to provide Douglas with its second local FM service, the Commission believes it is appropriate to solicit comments on the petitioner's proposal. Accordingly, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with regard to the community listed below, as follows:

	Channel No.	
City	Present	Proposed
Douglas, Arizona	237A	237A, 243A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before February 19, 1987, and reply comments on or before March 6, 1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's consultant, as follows:

Vir James, P.C.
Attention: Timothy Cutforth, P.E.
3137 W. Kentucky Ave.
Denver, CO 80219

6 . The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings, to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed. Reg. 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied' by a certificate of service. .(See Section 1.420(a), (b) and (c) of the Commission s Rules.)

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-472

Amendment of Section 73.606(b), Table of Assignments, TV Broadcast Stations (Tamuning, Guam)	RM-5581

NOTICE OF PROPOSED RULE MAKING

Adopted: November 28, 1986 Released: December 31, 1986

By the Chief, Allocations Branch:

1. The Commission herein considers a petition for rule making filed by Guahan Airwaves Corporation ("Guahan Airwaves") requesting the assignment of UHF television Channel 14 to Tamuning, Guam, as its first television channel. Petitioner stated its intention to apply for the channel.

2. Tamuning (population 8,862) [1] is said to be the second largest community in Guam. It is currently without local broadcast service.

3. We believe that the petitioner's proposal warrants consideration. The proposal meets all the spacing requirements of Section 73.610 of the Rules, and could provide for a first local television service at Tamuning. In view of the above, comments are invited on the proposal to amend the Television Table of Assignments with regard to the following community:

	Channel No.	
City	Present	Proposed
Tamuning, Guam	—	14

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before February 19, 1987, and reply comments on or before March 6, 1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Guahan Airwaves Corporation
c/o George H. Shapiro
Arent, Fox, Kintner, Plotkin
and Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(Counsel for Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings, to amend the FM Table of Allotments, Section 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed. Reg. 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b)

With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied' by a certificate of service. .(See Section 1.420(a), (b) and (c) of the Commission s Rules.)

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTE

[1] Population figures are taken from the 1980 U.S. Census.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-477

Amendment of Section 73.202(b) RM-5540
Table of Allotments
FM Broadcast Stations
(Marathon, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 4, 1986 Released: December 31, 1986

By the Chief, Allocations Branch:

1. The Commission herein considers a petition for rule making filed by Breeze 94, Inc., licensee of Station WMUM(FM), Marathon, Florida, which seeks to substitute Channel 234C2 for Channel 232A and to modify its license to specify operation on the Class C2 channel. The substitution can be made in compliance with the minimum distance separation requirements. [1]

2. In accordance with our established policy, we shall propose to modify the license for Station WMUM(FM), Channel 232A, to specify operation on Channel 234C2. Pursuant to the recent amendment to Section 1.420(g) of the Rules, the modification can be implemented without a showing that an equivalent channel is available to Marathon. See *Modification of FM Broadcast Licenses to Higher Class Adjacent and Co-Channels*, 51 FR 20290, June 4, 1986, 60 RR 2d 114 (1986).

3. In order to provide Marathon with an opportunity for its first wide area coverage FM station, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with regard to Marathon as follows:

	Channel No.	
City	Present	Proposed
Marathon, Florida	232A, 249A, 292A	234C2, 249A, 292A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before February 20, 1987, and reply comments on or before March 9 ,1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

John M. Spencer
Leibowitz and Spencer
2000 Pennsylvania Ave., N.W.
Suite 7500
Washington, D.C. 20006

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed. Reg. 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief Allocations Branch
Policy and Rules Division

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply

for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied' by a certificate of service. .(See Section 1.420(a), (b) and (c) of the Commission s Rules.)

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTE

[1] The spacing requirements for Channel 234C2 are met based on the grant of construction permits to Station WCVU(FM) Naples, Florida (BPH841012AK), and to Station WINZ-FM, Miami Beach, Florida (BMPH 8501091G). Thus final action on the proposed allotment of Channel 234C2 to Marathon must be delayed until both the Naples and Miami Beach stations receive a license at the new sites.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-476

Amendment of Section 73.202(b),	RM-5567
Table of Allotments,	
FM Broadcast Stations.	
(Greenwood, South Carolina)	

NOTICE OF PROPOSED RULE MAKING

Adopted: December 4, 1986 Released: December 31, 1986

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making submitted on behalf of United Community Enterprises, Inc. ("petitioner") requesting the allocation of Channel 278A to Greenwood, South Carolina, as the community's second local commercial FM service. Channel 278A can be allocated in compliance with the Commission's minimum distance separation and other technical requirements. No site restriction need be imposed. Petitioner states that it will apply for the channel, if allocated.

2. We believe the public interest would be served by seeking comments on the proposal since it could provide the community with its second local commercial FM service. Accordingly, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Greenwood, South Carolina	244A	243C2, [1], *248C2 [1], 278A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before February 20, 1987, and reply comments on or before March 9 ,1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Laurence J. Bernard, Jr., Esq.
Ward & Mendelsohn, P.C.
1100 - 17th Street, N.W.,
Suite 900
Washington, D.C. 20036
(Counsel to petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b). 73.504 and 73.606(b) of the Commission's Rules,* 46 Fed. Reg. 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b)

With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied' by a certificate of service. .(See Section 1.420(a), (b) and (c) of the Commission s Rules.)

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTE

[1] The Commission has optionally proposed to substitute Channel 243C2 for Channel 244A at Greenwood, South Carolina, and modify the license of Station WSCZ there, at the request of Eaton Broadcasting Corp. in MM Docket 86-32, 51 FR 4936, February 10, 1986. The Commission also has under consideration a counterproposal filed by the South Carolina Educational Television Commission requesting the allocation and reservation for noncommercial educational use of Channel 248C2 to Greenwood, South Carolina, in MM Docket No. 86-72, 51 FR 7466, March 4, 1986.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-475

Amendment of Section 73.504(a), Table of Allotments, Noncommercial Educational FM Broadcast Stations. (Las Cruces and Deming, New Mexico)	RM-5572

NOTICE OF PROPOSED RULE MAKING

Adopted: December 4, 1986 Released: December 31, 1986

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making submitted by the Associated Students of New Mexico State University Publications and Communications Board ("petitioner") requesting the substitution of noncommercial educational Channel 218A for Channel 209A at Las Cruces, and the substitution of noncommercial educational Channel 219A for Channel 218A at Deming, New Mexico. Petitioner states that it will apply for the Las Cruces channel, if allocated.

2. Petitioner requests the substitution of channels so that it may apply for use of Channel 218A at Las Cruces specifying a site on the campus of New Mexico State University. It states that it had submitted an application for use of Channel 209A, specifying the campus transmitter location, but the application was returned due to a short-spacing to Station KXCR, Channel 208A, at El Paso, Texas. Channel 218A can be utilized at petitioner's preferred location if the substitution of channels at Deming is adopted. Co-channel Class A allotments must be separated by 105 kilometers (65 miles) but Deming and Las Cruces are only approximately 95 kilometers apart. First adjacent Class A channels need be separated by only 64 kilometers (40 miles). Both the Deming and Las Cruces channels are unoccupied and unapplied for.

3. Channel 218A can be allocated to Las Cruces and Channel 219A can be allocated to Deming, New Mexico, in compliance with the Commission's minimum mileage separation and other technical requirements. Neither allotment requires the imposition of a site restriction. However, since both communities are located within 320 kilometers (199 miles) of the U.S.-Mexican border, the concurrence of the Mexican government must be obtained before the allotments can be finalized.

4. We believe the public interest would be served by proposing the channel substitutions at Las Cruces and Deming since it could provide Las Cruces with its second local noncommercial educational service. Accordingly, we propose to amend Section 73.504(a) of the Commission's Rules, the Table of Allotments for Noncommercial Educational FM Broadcast Stations, for the communities listed below, to read as follows:

City	Channel No. Present	Proposed
Deming, New Mexico	218A	219A
Las Cruces, New Mexico	209A, 214	214, 218A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before February 23, 1987, and reply comments on or before March 10 , 1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Audrey Marion Hardman, Chairman;
ASMNMU Publications and Communications Board,
Box CC,
Las Cruces,
New Mexico 88003

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.504(a) of the Commission's Rules. See. *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 Fed. Reg. 11549, published February 9, 1981.

8. For further information concerning this proceeding contact members of Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied' by a certificate of service. .(See Section 1.420(a), (b) and (c) of the Commission s Rules.)

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-473

Amendment of Section 73.202(b),	RM-5388
Table of Allotments,	
FM Broadcast Stations.	
(Roseville, Chico and	
South Lake Tahoe, California)	

NOTICE OF PROPOSED RULE MAKING

Adopted: November 28, 1986 Released: December 31, 1986

By the Chief, Allocations Branch:

1. The Commission herein considers a joint petition for rule making filed by the Fuller-Jeffrey Group ("FJG"), licensee of Stations KDJQ(FM) [1] (Channel 228A), Roseville, California, and KFMF(FM) [2] (Channel 229B), Chico, California, and Entertainment Enterprises, Inc. ("EEI"), licensee of Station KRLT(FM) (Channel 230B), South Lake Tahoe, California. Under their proposal, (1) Channel 229B1 is to be substituted for Channel 228A at Roseville, California, and the license of Station KDJQ(FM) modified accordingly; (2) Channel 230B1 would replace Channel 229B at Chico, California and the license of Station KFMF(FM) modified; (3) Channel 230B1 would be substituted for Channel 230B at South Lake Tahoe, California with the license of Station KRLT(FM) reclassified, accordingly.

2. FJG states that while the current signal of KDJQ is adequate within the Roseville urbanized area, it is presently unable to provide the requisite 70 dBu signal over its extended area. Thus, petitioner claims that the requested modification of KDJQ's facilities would enable it to provide improved coverage to Roseville by increasing its service area 1,165 square miles, with a concomitant gain of 114,915 persons,[3] and would simultaneously eliminate the need for its existing waiver of Section 73.315 of the Commission's Rules.

3. According to KBI and EEI, both KFMF(FM), Chico and KRLT(FM), South Lake Tahoe, California, presently operate with facilities below the minimum required for eventual retention as a Class B station. In fact, petitioners advise that the Commission's *Public Notice* released June 13, 1984 concerning "Reclassification of Class 'B' FM Facilities" lists both KFMF and KRLT as subject to reclassification as B1 channels if no changes are made to their existing facilities by March 1, 1987.

4. KBI advises that Station KFMF currently operates at 15 kW ERP whereas a minimum of 25 kW will be required to maintain Class B status. Also, KBI states that it recently attempted to relocate its transmitter as a Class B station in order to provide improved coverage to Chico. However, its application was returned as contravening the minimum spacing standards of Section 73.207 of the Commission's Rules to another FM station. Accordingly, KBI claims that on the basis of its engineering study, it has been determined that if its license is modified to specify operation as a Class B1 station, there are numerous locations, at higher elevations, from which it can operate with maximum B1 facilities, unhindered by spacing restrictions or terrain obstructions, and from which city-grade service can be provided to Chico. Thus, KBI asserts, the proposed relocation will actually enable it to increase its service area and the population it serves.

5. EEI advises that Station KRLT presently operates at 6kW at -58 meters. Further, it notes that even absent this proposal, it is severely constrained from increasing its power in the Lake Tahoe Basin by surrounding mountains, which it maintains, "reflect" FM signals. In fact, EEI asserts that the mountains create dire multipath problems for all FM stations in the Tahoe Basin. Therefore, EEI adds that increasing power is not the solution since that often adds to existing multipath problems and degrades signal reception. Furthermore, EEI advises that not only are its present operating values essentially the maximum local authorities will allow at its current site atop a hotel, but that the ERP at its antenna approaches the maximum allowable pursuant to the Commission's directive in OST Bulletin No. 65, "Evaluating Compliance with FCC Specified Guidelines for Human Exposure to Radiofrequency Radiation." Although it has investigated other sites, EEI advises that none appears to be available at this time from which it could operate with Class B facilities.

6. Both Stations KFMF and KRLT indicate that in view of either spacing or environmental constraints, or other limitating technical matters, they have no current intention of proposing any facility changes to minimum Class B facilities, and therefore, will ultimately be reclassified as Class B1 operations in any event. As a result, petitioners add that this proposal does not alter the power levels that Stations KFMF and KRLT will ultimately be reduced to, while conversely, it will enable Station KDJQ(FM) to provide expanded service to the Roseville community. Therefore, it is represented that each requesting party has signified its agreement with and acquiescence to the changes requested herein.

7. In view of the above, we believe the proposals herein warrant consideration. A staff engineering study reveals that Channel 229B1 can be substituted for Channel 228A at Roseville, California with a site restriction at least 5.3 kilometers (3.3 miles) southeast of the community to avoid short-spacing to the proposed substitution of Channel 230B1 for Channel 229B at Chico, as well as the substitution of Channel 230B1 for Channel 230B at South Lake Tahoe, California. Channel 230B1 can be substituted for Channel 229B at Chico with a site restriction at least 15 kilometers (9.3 miles) northeast to avoid a conflict with Station KRLT(FM), South Lake Tahoe. Finally, Channel 23OB1 can be substituted for Channel 230B at the present site of Station KRLT(FM), South Lake Tahoe, consistent with the minimum spacing requirements of Section 73.207 of the Commission's Rules.

8. In accordance with Commission policy, we shall propose to: modify the license of Station KDJQ(FM), Roseville, to specify operation on Channel 229B1; modify Station KFMF(FM), Chico to specify operation on Channel 230B1, and reclassify Station KRLT(FM), South Lake Tahoe, California to specify operation on Channel 230B1,[4] should these proposals ultimately prevail. Also interested parties should note it is unnecessary to demonstrate the availability of an additional equivalent chan-

nel to satisfy any other expressions of interest in these proposals. See, *Amendment of the Commission's Rules Regarding Modification of FM Broadcast Licenses to Higher Class Co channel or Adjacent Channels*, 51 FR 20290, June 4, 1986.

9. In light of the above, we consider it appropriate to seek comments on the proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules as follows:

City	Channel No. Present	Proposed
Chico, California	229B, 236B	230B1, 236B
Roseville, California	228A	229B1
South Lake Tahoe, California	230B, 275B	230B1, 275B

10. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before February 23, 1987, and reply comments on or before March 10 , 1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Roger J. Metzler Jr. Esq.
Farrand Halti Cooper & Metzler
701 Sutter Street, 7th Floor
San Francisco, California 94109
(Counsel for Petitioners)

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission. or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered In the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied' by a certificate of service. .(See Section 1.420(a), (b) and (c) of the Commission s Rules.)

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTES

[1] Formerly KPOP(FM).

[2] Station KFMF(FM) was formerly licensed to Kragwood Broadcasting, Inc. On July 18, 1986 an application (BTCH-860428HG) to voluntarily transfer control of Station KFMF to Fuller-Jeffrey Broadcasting Corporation of Northern California was granted.

[3] Petitioner claims that during the last Census period, the rural population of Roseville increased over 7%, and that such growth trend appears to be continuing away from the urbanized area.

[4] Although existing licensees generally may apply to downgrade their currently authorized station class without first proceeding to a rule making proceeding, that provision does not extend to the instant situation since the Roseville request is contingent upon the Chico and South Lake Tahoe modification proposals and the Chico proposal involves a change in channel number.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-368

In the Matter of

Elimination of FCC Form 903 and
Form 905, Monthly Forms Required
From Radiotelegraph, Ocean-Cable
and Wire-Telegraph Carriers

REPORT AND ORDER

(Proceeding Terminated)

Adopted: December 16, 1986; Released: December 31, 1986

By the Commission:

INTRODUCTION

1. Earlier this year we issued a Notice of Proposed Rulemaking (*Notice*) that proposed to eliminate the monthly reporting requirement of Radiotelegraph, Ocean-Cable and Wire-Telegraph Carriers.[1] In that *Notice*, we tentatively concluded that, because information in the Forms 903 and 905 is used by this Commission on an infrequent and limited basis, we could further our goal of reducing unnecessary regulatory paperwork by eliminating the monthly reporting requirement.

2. Form 903 contains 122 monthly data items and Form 905 contains 91. The data are submitted by the carriers on computer media (punched cards) along with a certified listing of the data. We then run the cards through a computer and develop a hard copy report, copies of which are mailed to the originating company for verification of accuracy. After the data are verified for accuracy, a quarterly summary of the telegraph industry is published.

3. Sections 1.786 and 43.31 of this Commission's Rules, 47 C.F.R. §§ 1.786, 43.31, currently require Radiotelegraph, Ocean-Cable, and Wire-Telegraph carriers which had annual operating revenues in excess of $250,000 for the preceding year to file monthly reports of financial, operating and statistical information. Form 903 is required from Radiotelegraph and Ocean-Cable carriers, and Form 905 is required from Wire-Telegraph carriers.[2]

4. Comments were filed by RCA Globcom, TRT, WUI and Western Union. Reply Comments were filed by FTCC, ITT Worldcom and RCA Globcom. Western Union supported our proposal. The IRCs opposed our tentative decision to eliminate the monthly reporting requirement. However, the IRCs have not persuaded us that the monthly reports are essential for our regulatory needs or are otherwise mandated by the public interest. Thus, we are amending our rules to eliminate the monthly reporting requirement for the Radiotelegraph, Ocean-Cable, and Wire-Telegraph carriers.[3]

SUMMARY OF COMMENTS

5. All of the subject IRCs favor retention of the monthly reporting requirement. Among them, there is widespread agreement that we are placing too much emphasis on our limited use of these monthly reports, and not enough emphasis on the importance of the information that these reports provide the subject carriers.[4] Most of the commentors argue that their reporting burden is minimal and is a well-assimilated part of their activities.[5] They also argue that competition flourishes most effectively if all parties have access to the fullest information, and assert that the monthly reports and our quarterly generated summaries enable them to track their performance against their competition on a timely basis.[6]

6. TRT asserts, and ITT Worldcom agrees, that the reported information can help carriers detect violations of the Communications Act and Commission policies enabling them to seek redress through this Commission's complaint process. WUI and ITT Worldcom argue that special studies and direct information requests are time consuming and may be more costly than the current recurring process. ITT Worldcom also observes that there are no trade associations for the record carriers. RCA Globcom notes the willingness of various parties to defray a portion of this Commission's expense of preparing and distributing the quarterly summaries. Finally, most of the IRCs suggest we establish a quarterly reporting requirement if we choose to eliminate the monthly reporting requirement.[7]

7. Western Union supports our proposal to eliminate the monthly reporting requirement. It agrees with our tentative conclusion that there is no regulatory need for monthly submissions. The Western Union comments indicate that our proposal would relieve Western Union of the burdens associated with this reporting requirement, enabling the company to employ its resources more productively.

DISCUSSION

8. Although the Form 903 and 905 data may be useful to the IRCs in their general business planning, none of the carriers has persuaded us that the monthly data are necessary for our regulatory needs or are required by the public interest. Rather, it appears that the IRCs want the data only for private business purposes. Essentially, the IRCs argue that the monthly data and our quarterly summaries are necessary as a timely input source for an industry monitoring function. We doubt that product, price, facilities construction or other marketing decisions will be adversely affected by the absence of monthly reports that, at best, document extremely short-term or seasonal changes in a company's financial position. The individual carriers know from month to month whether demand for their own services is growing, waning, or remaining constant. This information should be sufficient for a carrier's short-term business needs. The carrier's annual reports, as well as other data on file with this Commission, will still be available for use in longer range planning.

9. Moreover, this Commission does not generally use the monthly data in our facility authorization or ratemaking proceedings. While we have found annual financial and traffic data useful in conducting different types of economic analyses for various proceedings, such as international facilities planning dockets, monitoring functions,

estimating growth trends for various international telecommunications services and conducting market structure studies of the international telecommunications industry, the monthly data are almost never used because the reports do not contain sufficient detail and are too highly seasonal.

10. Although we are convinced that the carrier's monthly reporting burden is minimal, we are not so sure that the reporting process is a well assimilated part of their activities. For instance, at the time the initial comments were filed, October 15, 1986, only Western Union was current with its monthly filings. All of the IRC reports were between one and four months' overdue. Individual carriers have tried to persuade us to force other carriers to file on time when they themselves are late. Based upon requests for information, it seems that the carriers are more concerned with their competitors' reports than with themselves meeting filing deadlines.

11. Eliminating the Form 903 and 905 does not preclude us from directing the affected carriers to file detailed information should the need arise. We believe that most of our needs for data are adequately met with the annual reports filed by these carriers. When necessary, special data requests can be tailored to specific needs. Since there is no ongoing need for monthly data, special studies will eliminate the need for all radiotelegraph, ocean-cable and wire-telegraph carriers to submit monthly reports. This will not only reduce the costs to the carriers, it will also reduce this Commission's costs.

12. This decision follows several recent Commission decisions minimizing regulatory burdens. In Elimination of Form P, Annual Report of Miscellaneous Common Carriers; Amendment of Annual Report of Licensees in Public Mobile Radio Services; and Amendment of Section 43.61 of the Commission's Rules to Update and Simplify the Required Traffic Reports filed by International Telecommunications Carriers, this Commission found Form P, Form L and the semi-annual traffic reports to be unnecessary regulatory burdens and eliminated them.[8] Finally, in International Competitive Carrier Policies, we determined, *inter alia*, that all carriers filing Forms 903 and 905 are non-dominant and we streamlined certain tariff and facility licensing regulations for these carriers.[9]

13. In summary, we conclude that the costs of collecting monthly data from all radiotelegraph, ocean-cable and wire-telegraph carriers outweigh the benefits derived from its availability to this Commission. To the extent that such data are needed by the carriers, private voluntary collection can be established. For these reasons, we are also rejecting the IRCs proposal to establish a new quarterly reporting requirement if we decided to eliminate the monthly reports.

OTHER MATTERS

14. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to reduce information collection requirements on the public. OMB approval is not required because fewer than ten carriers submit Form 903 and 905.[10]

15. In compliance with the provisions of Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that the elimination of the reporting of radiotelegraph, ocean-cable, and wire telegraph carriers on monthly Forms 903 and 905 will not have a significant economic impact on a substantial number of small entities and will ease the recordkeeping and reporting requirement of these carriers. According to the affected carriers, this reporting requirement imposes a minor reporting burden. Therefore, its cost is minimal. Additionally, most entities reporting this data are large companies. The rationale for the elimination is outlined in the above discussion.

ORDERING CLAUSES

16. IT IS ORDERED, That pursuant to the provisions of Section 4(i), 219, 403 and 404 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 219, 403 and 404, FCC Form 903 and Form 905, Monthly Reports of Radiotelegraph, Ocean-Cable and Wire-Telegraph carriers, are eliminated, effective with the monthly reports for calendar year 1987.

17. IT IS FURTHER ORDERED, That Part 1 and Part 43 of the FCC Rules and Regulations are amended as set forth in the Appendix below effective March 31, 1987.

18. IT IS FURTHER ORDERED, That this proceeding is hereby terminated.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

APPENDIX

Parts 1 and 43 of the Code of Federal Regulations are amended as follows:

1. Authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.786(a) is revised to read as follows:

(a) Monthly reports of revenues, expenses, and other items shall be filed by carriers as required by Part 43 of this chapter on the following:

FCC Report 901-Telephone.

3. Authority citation for Part 43 continues to read:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply Secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

4. Section 43.31(a) is revised to read as follows:

(a) Each telephone common carrier which had operating revenues for the preceding year in excess of $100 million shall file with the Commission within

forty (40) days after the end of each calendar month, certified report on computer media as prescribed by the Commission.

FOOTNOTES

[1] Elimination of FCC Form 903 and Form 905, Monthly Forms Required from Radiotelegraph, Ocean-Cable, and Wire-Telegraph Carriers, CC Docket No. 86-368, FCC 86-393, released September 30, 1986.

[2] Five international record carriers (IRCs) currently file Form 903. They are FTCC McDonnell Douglas International Telecommunications Company (FTCC); ITT World Communications, Inc. (ITT Worldcom); RCA Global Communications, Inc. (RCA Globcom); TRT Telecommunications Corporation (TRT); and Western Union International, Inc. (WUI). Western Union Telegraph Company (Western Union) is the only company filing Form 905.

[3] Sections 1.786 and 43.31 of the Commission's Rules, which set forth the filing requirments for Forms 903 and 905, are founded upon Section 219(b) of the Communications Act, which gives the Commission discretionary authority to require monthly reports. No section of the Communications Act requires the Commission to receive monthly reports from the Radiotelegraph, Ocean-Cable, or Wire-Telegraph carriers.

[4] *See e.g.*, Comments of RCA Globcom, TRT; Reply Comments of FTCC, and ITT Worldcom.

[5] *See e.g.*, Comments of RCA Globcom, WUI; Reply Comments of FTCC, and ITT Worldcom.

[6] *See e.g.*, Comments of RCA Globcom, TRT; Reply Comments of FTCC, and ITT Worldcom.

[7] *See e.g.*, Comments of RCA Globcom, TRT; Reply Comments of FTCC, and ITT Worldcom.

[8] *Notice at para.* 4.

[9] *Notice at para.* 3.

[10] 5 C.F.R. Section 1320. 4(a).

Before the
Federal Communications Commission
Washington, D.C. 20554

December 19, 1986

BY DIRECTION LETTER

Mr. James C. McKinney
Mediator/Facilitator
Room 314
1919 M Street, N. W.
Washington, D. C. 20554

Released: December 31, 1986

Dear Mr. McKinney:

This is in response to your Interim Report filed November 26, 1986 as the Mediator/Facilitator in the nine comparative renewal proceedings involving 13 stations owned by RKO General, Inc. In your report you informed the Commission as to the progress made in negotiations looking toward a comprehensive settlement of the nine proceedings. Your report states that on December 8 outside parties interested in acquiring some or all of the RKO properties were scheduled to submit bids on a market-by-market basis. Your report further stated that by January 9, 1987 you anticipated that you would know the outcome of negotiations in each market and that on January 31 you would submit a final report.

We have noted the recommendations that you made in your Interim Report. You stated your concern that deadlocks might develop in the settlement negotiations, e.g., because of disputes among the parties as to the distribution of sales proceeds. Accordingly, you suggested that the Commission immediately rule on the pending settlement agreement involving RKO's co-owned Station KHJ-TV, Los Angeles, California, an action which you propose would enhance the prospect of a comprehensive settlement agreement.

We wish to inform you that the Commission does not now believe that it would be appropriate to act on the KHJ-TV settlement agreement prior to the report of any developments which may be forthcoming by January 9. Further, we request that you inform the Commission of the status of each of the pending settlement negotiations as soon after January 9 as possible.

BY DIRECTION OF THE COMMISSION

William J. Tricarico
Secretary

APPENDIX

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-478

In the Matter of

Amendment of Section 73.202(b), RM-5484
Table of Allotments,
FM Broadcast Stations.
(Seymour, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 4, 1986 Released: December 31, 1986

By the Chief, Allocations Branch:

1. A petition for rule making was filed by The Venture Group, Inc., ("petitioner"), licensee of Station KSEY-FM, Channel 232A at Seymour, Texas, requesting the substitution of Class C2 Channel 231 for Channel 232A and modification of its license to specify operation on the new channel.

2. We believe the petitioner's proposal warrants consideration. The substitution can be made in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.3 kilometers (6.4 miles) west of the city to avoid a short spacing to Station KESS(FM), Channel 231, Fort Worth, Texas.

3. In accordance with the recent amendment of Sec. 1.420(g) of the Commission's Rules, we shall propose to modify the license of Station KSEY-FM to specify operation on Channel 231C2. We shall not accept other interests in the use of the proposed channel at Seymour. *See Modification of FM Broadcast Licenses to Higher Class Co-channel or Adjacent Channels,* MM Docket No. 85-313, 51 FR 20290, June 4, 1986.

4. Accordingly, in order to provide Seymour with its first wide coverage FM station, the Commission proposes to amend the FM Table of Allotments, Sec. 73.202(b) of the Rules, with regard to the following community:

	Channel No.	
City	Present	Proposed
Seymour, Texas	232A	231C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before February 20, 1987, and reply comments on or before March 9, 1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Eugene T. Smith, Esquire
715 G Street, S.E.
Washington, D.C. 20003
(Counsel for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Sec. 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 Fed. Reg. 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request. 3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this pro-

ceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied' by a certificate of service. .(See Section 1.420(a), (b) and (c) of the Commission s Rules.)

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-479

In the Matter of

Amendment of § 73.202(b), RM-5505
Table of Allotments,
FM Broadcast Stations.
(Bismarck, North Dakota)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 4, 1986 Released: December 31, 1986

Chief, Allocations Branch:

1. The Commission has before it the petition for rule making submitted by BDF Broadcasting, Inc. ("petitioner") requesting the allocation of Channel 254 to Bismarck, North Dakota, as the community's fourth local FM service. Channel 254 can be allocated in compliance with the Commission's minimum distance separation and other technical requirements without the imposition of a site restriction. Petitioner states that it will apply for the channel, if allocated.

2. Bismarck is located within 320 kilometers (200 miles) of the U.S.-Canadian border. Therefore, the concurrence of the Canadian Government must be obtained before the channel can be allocated.

3. We believe the public interest would be served by proposing the channel allotment, as requested, since it could provide Bismarck with an additional radio service. Accordingly, we propose to amend the FM Table of Allotments, Sec. 73.202(b) of the Commission's Rules, for the community listed below to read as follows:

	Channel No.	
City	Present	Proposed
Bismarck, North Dakota	225, 233, 243	225, 233, 243, 254

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before February 20, 1987 and reply comments on or before March 9 , 1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy if such comments should be served on the petitioners, or their counsel or consultant. as follows:

Matthew H. McCormick
Reddy, Begley and Martin
2033 M Street, N.W.
Washington, D.C. 20036
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Sec. 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed. Reg. 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However. members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied' by a certificate of service. .(See Section 1.420(a), (b) and (c) of the Commission s Rules.)

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-480

In the Matter of

Amendment of Sec. 73.202(b), RM-5431
Table of Allotments,
FM Broadcast Stations.
(Starkville, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 4, 1986 Released: December 31, 1986

By the Chief, Allocations Branch:

1. A petition for rule making has been filed by Starkville Broadcasting Co., Inc. ("petitioner") requesting the substitution of FM Channel 291C2 for Channel 292A at Starkville, Mississippi. Starkville Broadcasting Co. also requests modification of its license for Station WSMU(FM), Starkville, Channel 292A to specify operation on Channel 291C2.

2. Channel 291C2 can be allocated to Starkville, Mississippi, in compliance with the minimum distance separation requirements of Sec. 73.207 of the Commission's Rules provided a construction permit (BMPH 850712LQ) filed by Station WSTH(FM), Channel 291, Alexander City, Alabama, to relocate its transmitter and come into full compliance for the Class C1 standards is approved by the Commission. At present, the proposal for Channel 291C2 would be short spaced to the 16 kilometer buffer zone of Station WSTH(FM). However, if the construction permit is approved to allow Station WSTH(FM) to operate as a Class C1 facility, the buffer zone would be removed and Channel 291C2 could be allocated to Starkville. We shall propose to modify the license of Station WSMU(FM), Channel 292A to specify operation on Channel 291C2 in accordance with Sec. 1.420(g) of the Rules. However, we shall delay final action on the proposal pending the licensing of the Alexander City station as proposed. It will also be necessary to impose a site restriction 22.3 kilometers (13.9 miles) southeast of Starkville. The site restriction will prevent a conflict with Station WHAY(FM), Channel 288A, Aberdeen, Mississippi.

3. In order to provide a wide coverage area station for the Starkville, Mississippi area, the Commission PROPOSES TO AMEND the FM Table of Allotments, Sec. 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
Community	Present	Proposed
Starkville, Mississippi	221A, 292A	221A, 291C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before February 20, 1987 and reply comments on or before March 9 , 1987, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Ashton R. Hardy
James J. Popham
Riley M. Murphy
Hardy & Popham
700 Camp Street
New Orleans, Louisiana 70130
(Counsel for Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Sec. 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed. Reg. 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding. (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.) (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket. (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied' by a certificate of service. .(See Section 1.420(a), (b) and (c) of the Commission s Rules.)

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMSAT INTERNATIONAL
COMMUNICATIONS, INC. File No. CSG-86-070-P/L

Application for authority to construct
and operate international earth station
facilities at Chicago, Illinois for
provision of INTELSAT Business Services

ORDER AND AUTHORIZATION

Adopted: December 19, 1986 Released December 31, 1986

By the Common Carrier Bureau:

1. The Commission is considering an application filed on August 25, 1986, by Comsat International Communications, Inc. (CICI), requesting authority, pursuant to Title III of the Communications Act of 1934, and Sections 201(c)(4), (c)(6) and (c)(7) of the Communications Satellite Act of 1962, to construct and operate international earth station facilities at Chicago, Illinois, for provision of INTELSAT Business Services (IBS). The application was placed on public notice on September 10, 1986. No comments were received. The applicant has been granted blanket authority to establish and operate channels of communication between the US and various overseas points for provision of IBS.[1]

2. The proposed earth station will consist of a 9 meter antenna meeting INTELSAT Standard E-3 parameters connecting with an INTELSAT V satellite in the 11/14, 12/14 GHz band. The proposed earth station will be located in Chicago, Illinois and will be used to provide a full range of IBS services to customers in the Chicago, Illinois area.

3. In its Report and Order in the *Earth Station Ownership Proceeding* in CC Docket No. 82-540, the Commission modified its policy on the ownership and operation of U.S. international earth stations that access the INTELSAT system by permitting carriers, individually or jointly, to own and operate their own earth station facilities.[2] In that Order, the Commission distinguished between IBS and/or television earth stations and multipurpose stations. It determined that earth stations dedicated to providing IBS and/or television services do not raise the same concerns about impact on the INTELSAT system that are raised by multipurpose stations. It also determined that the public interest requires that IBS be introduced in the United States as soon as possible. The Commission therefore concluded that it would consider only minimal legal, financial, and technical qualifications of the applicant as required by Sections 308 and 319 of the Communications Act, when processing IBS and television service applications. The Commission further concluded that absent special problems, it would treat these applications as routine and expeditiously process them.[3] The Commission has granted many applications to construct and operate IBS earth stations based on this approach.[4]

4. CICI's legal, technical, and financial qualifications to construct and operate the proposed earth station are established. CICI has been authorized to construct and operate other IBS earth stations.[5] The proposed earth station complies with INTELSAT performance criteria for IBS stations. AT&T has completed the necessary frequency coordination.

5. The scope of operation of the proposed station will be the same as that permitted by the Commission in previous IBS authorizations. We will limit the authorization to the provision of IBS and those video services compatible with the station's digital format operation. To the extent that the applicant may seek to provide certain newly proposed INTELSAT services which fall within the IBS/television service category, we will not restrict operation of the proposed stations. However, it may not provide any service which falls outside the IBS/television service category. Any authorization to use the proposed station as a multipurpose earth station would require a determination as to traffic and revenue diversion from existing multipurpose earth stations that may result.

6. Upon consideration of the application, we find that authorization of requested services and facilities is in the public interest.

7. Accordingly, IT IS ORDERED, pursuant to Sections 304, 309, and 319 of the Communications Act of 1934 and Section 201(c) of the Communications Satellite Act of 1962, that application File No. CSG-86-070-P/L IS GRANTED and CICI is authorized to construct and operate the proposed earth station at Chicago, Illinois to provide IBS and related digital video services.[6] Before completion of equipment installation and facility activation, however the applicants should provide the Commission with a summary of actually installed equipment.

8. This order is issued under Section 0.291 of the Commission's Rules and Regulations and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

James L. Ball
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] See Memorandum Opinion and Order, Mimeo No. 7025, (released September 13, 1985), 1-T-C-85-158.

[2] Earth Station Ownership, 100 FCC 2d 250 (1984).

[3] Upon grant of an IBS/television service application, the applicant will be issued a combined Radio Station Construction Permit and License (FCC Form 456-P). While the Commission will limit the use of the authorized facilities to the provision of

IBS or television services, carriers may seek additional authorization if they desire to use these facilities as multipurpose earth stations.

[4] *See* cases cited in Satellite Gateway Communications, Inc., Mimeo No. 2696 (released March 4, 1986) and American Telephone and Telegraph Co., Mimeo No. 3327 (released March 25, 1986).

[5] Comsat International Communications, Inc. (File No. CSG-86-017-P/L), Mimeo No. 4444 (released May 13, 1986).

[6] This authorization is not to be construed as permitting the provision of IBS between earth stations located within the United States.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MOBILFONE SERVICE, INC.

Application for authority to discontinue service at Maritime Mobile Public Coast III-B Station KQU 583, Arkoma, Oklahoma — File No. I-T-D-86-005

Application for authority to discontinue service at Maritime Mobile Public Coast III-B Station KFL 353, Blue Mountain, Arkansas — File No. I-T-D-86-006

ORDER AND AUTHORIZATION

Adopted: December 19, 1986 Released December 31, 1986

By the Common Carrier Bureau:

1. The Commission has before it two applications, filed on August 22, 1986, by Mobilfone Service, Inc. (MSI), for authority pursuant to Section 214 of the Communications Act of 1934 to discontinue service from its Class III-B Public Coast radio stations KQU 583 located in Arkoma, Oklahoma, and KFL 353 located in Blue Mountain, Arkansas. The two stations principally serve Arkansas River traffic in the Mt. Magazine area to the west of Fort Smith, Arkansas. No comments, petitions to deny or other pleadings were filed regarding the applications.

2. The basic statutory test to be applied by this Commission in considering applications for discontinuance of common carrier service to a community is found in Section 214(a) of the Act. Under this Section, the Commission may permit discontinuance of service upon a finding that "neither the present nor future public convenience and necessity will be adversely affected" by the proposed action. Application of this standard presents the Commission with a task of balancing the financial burden that would be imposed on the carrier by continued operation of its facilities with the needs and interests of the user community.[1]

3. In support of its applications, MSI states traffic via the subject stations has been steadily declining in the recent past. MSI has submitted figures showing that very little traffic has been transmitted via the two stations. Not one emergency message has been received by any of the the stations during the past year. MSI states that the proposed discontinuances will not adversely affect the public convenience and necessity since alternative means of communications are available via MSI's high frequency facilities that provide adequate service in both the affected areas. Further, MSI is losing approximately $6700 per month in expenses for the subject stations.

4. Upon consideration of the applications and in view of the foregoing, IT IS HEREBY CERTIFIED that neither the present nor future public convenience and necessity will be adversely affected by the discontinuance of service via the instant stations.

5. Accordingly, IT IS ORDERED that applications File Nos. I-T-D-86-005 and I-T-D-86-006 ARE GRANTED, and MSI is authorized to discontinue service via its Maritime Mobile Public Coast III-B stations KQU 583 at Arkoma, Oklahoma, and KFL 353 at Blue Mountain, Arkansas.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

James L. Ball
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] Public Coast Radiotelegraph Stations, 67 FCC 2d 790 at 795 (1978).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Proposed Revisions to the
Average Schedules

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 1986 Released: December 30, 1986

By the Chief, Common Carrier Bureau:

I. Introduction

1. Pursuant to earlier Commission direction, on October 1, 1986, the National Exchange Carrier Association ("NECA") filed proposed revisions to the average schedules for the twelve-month period commencing January 1, 1987. These revisions included a restructuring of the line haul and special access services compensation schedules, as well as revisions to the common line and traffic-sensitive schedules reflecting cost and demand forecast changes for 1987 and the Commission's reduced rate-of-return prescription for interstate access services. On November 24, 1986, NECA filed a supplement making certain limited modifications to, and clarifications of, its earlier filing. For each filing, we issued a Public Notice requesting public comment.[1] No person filed comments or reply comments addressing either of NECA's filings, nor has any person otherwise filed any petition or complaint concerning NECA's proposed average schedule revisions. After review of NECA's filings, we approve its proposed revisions to the average schedules.

II. Background

2. The Commission's average schedules have been available for the convenience of exchange carriers "that have been assumed, because of their small size, not to have sufficient financial resources or expertise to justify a requirement that they perform jurisdictionally separated cost studies for determining their compensation in originating and terminating interstate telecommunications services."[2] No exchange carrier is required to use the average schedules. Any exchange carrier that believes that the average schedules do not provide appropriate compensation is entitled to be fully compensated on the basis of interstate cost studies.[3]

3. The average schedules consist of four major compensation arrangements. Separate arrangements exist to compensate companies for common line expenses; traffic-sensitive functions (*e. g.*, central office functions); line haul functions (interexchange facilities services, sometimes referred to as Schedule C functions); and special access functions (such as point-to-point voice-grade private line and remote metering and data services).[4]

4. In the *AverageSchedule Order*, the Commission directed NECA to file proposed revisions to the line haul and special access compensation formulas on not less than 90 days notice with a scheduled effective date of January 1, 1987.[5] In addition, Section 69.606(b) of the Commission's rules requires NECA to submit proposed revisions to the average schedules for each annual period subsequent to December 31, 1986, or to certify that "a majority of the directors of the association believe that no revisions are warranted for such period on or before June 30 of the preceding year."[6]

III. The NECA Filings

5. In response to these requirements, on October 1, 1986, NECA proposed revisions to the average schedules for the twelve month period beginning January 1, 1987.[7] The revisions are of two types. The first consists of a restructuring of the line haul (Schedule C) and the special access services compensation schedules.[8] A comprehensive restructuring of the compensation elements for line haul services was last undertaken in 1957.[9] The second type of revision consists of modifications to the common line and traffic-sensitive portions of the average schedules[10] to reflect forecast changes in costs and demand for 1987, and the required reduction in the prescribed rate of return for interstate exchange access services.[11] The first set of revisions deserves further explanation.

6. As presently structured, the Schedule C or "line haul" average schedule computes settlements per route mile of facility dependent on the density of circuits in each circuit group.[12] This approach does not distinguish between central office plant, the costs of which are non-distance-sensitive (NDS), and outside plant, the costs of which are distance-sensitive (DS).[13] Thus, as stated by NECA, the effect of the existing line haul schedules is to preclude "a company with switched terminations but no circuit mileage from receiving any line haul settlement under the current formulas."[14] The proposed line haul revisions would resolve this problem by separating compensation for existing Schedule C functions into DS and NDS components.[15]

7. According to NECA, special access services have historically presented the most complex reporting requirements while representing less than three percent of total average schedule settlements. As a consequence, NECA proposes, in the interest of administrative efficiency, that special access compensation be directly proportional to the revenues that are received by average schedule companies from the special access tariffs.[16] Under this approach, average schedule companies would simply retain more than 99 percent of the special access revenues that they receive pursuant to interstate tariffs.[17]

8. On November 24, 1986, NECA filed a supplement to clarify further the derivation of its proposed line haul and special access formulas.[18] In addition, the supplement modified the initial proposal by providing that the rate of return earned each month by cost companies would be applied to average schedule settlements.[19] The methodology initially proposed by NECA would have utilized a rolling twelve-month average of the rates of return earned by cost companies.[20]

IV. Discussion

9. We have concluded that the revisions that NECA has proposed constitute improvements to the existing line haul and special access compensation schedules. The restructuring of the line haul schedule to include DS and NDS components more accurately reflects the nature of the costs of the services that are being provided. In addition, the reduction in administrative complexity and attendant expense that will result from the more simplified revenue retention calculation that applies to special access services is a desirable feature of the proposed revisions.[21]

10. When we ordered NECA to file proposed revisions to the line haul and special access portions of the average schedules, we required that the proposed revisions address the concerns expressed by the United States Court of Appeals for the District of Columbia in *NARUC v. FCC*.[22] Specifically, this Commission noted that the Court had expressed particular concern about companies with abnormally high line haul costs and had indicated "that it was possible that its concerns could be addressed through appropriate revisions to the line haul portions of the average schedules."[23] The Commission, therefore, directed NECA to implement revisions that would address the Court's concern by designing its revised average schedules to take into account the fact that some average schedule companies have unusually high line haul costs.[24]

11. From a review of NECA's filings, it appears that the revisions that have been proposed by NECA have been designed to meet this requirement,[25] and have properly divided line haul compensation into central office and outside plant components. This should cause average schedule compensation to reflect more accurately the underlying costs of providing those services. Supporting that assessment is the absence of any comments, petitions, proposals for improvement, or complaints by any of the parties that appeared before the Court in *NARUC v. FCC*, or by any other party. As a consequence, we approve the revisions that NECA has proposed to the average schedules in its October 1, 1986, filing, as modified by NECA's November 24, 1986, supplementary filing.[26]

IV. Ordering Clause

12. Pursuant to the authority that is contained in Sections 0.91 and 69.606(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 69.606(a), the revisions to the average schedules that were proposed by NECA on October 1, 1986, as supplemented by NECA on November 24, 1986, APPROVED, effective January 1, 1987.

FEDERAL COMMUNICATIONS COMMISSION

Albert Halprin
Chief, Common Carrier Bureau

FOOTNOTES

[1] NECA Files Revisions to the Average Schedules, FCC Public Notice No. 0042 (released October 6, 1986); NECA Files Supplement to Proposed Revisions to the Average Schedules, FCC Public Notice No. 0837 (released Nov. 26, 1986).

[2] Report and Order, MTS and WATS Market Structure: Average Schedule Companies, CC Docket No. 78-72, Phase I, FCC 86-177 (released April 18, 1986) (" *Average Schedule Order* ") at para. 2.

[3] Memorandum Opinion and Order, MTS and WATS Market Structure: Average Schedule Companies, CC Docket No. 78-72, Phase I, FCC 86-411 (released Sept. 30, 1986) (hereinafter " *Average Schedule Order Reconsideration* ") at para. 2. A company that chooses to be compensated on a cost basis is entitled to reimbursement for reasonable expenses associated with the preparation of interstate cost studies. *See id.* at para. 14, n.25.

[4] *See generally*, NECA Proposed Modification to the Average Schedules (filed Sept. 17, 1985). Average schedule exchange carriers also received compensation for separate reimbursement items outside the four major compensation arrangments. These items include, for example, CPE settlements (which are being phased out), equal access implementation costs, carrier access billing costs, and access administrative expenses. These carriers may also receive line haul and special access compensation on the basis of cost studies rather than the average schedules through the end of 1987 (pursuant to waiver); transition payments from the average schedules that were in effect prior to June 1, 1986; and High Cost Fund Assistance. *See generally* 1987 Modification of Average Schedules proposed by NECA (" *1987 Revisions* ") at 1-15, *Average Schedule Order* and references cited therein, and NECA Reply (filed January 1, 1986).

[5] *Average Schedule Order* at paras. 10, 18.

[6] 47 C.F.R. § 69.606(b), as amended, 50 Fed. Reg. 356 (Oct. 10, 1985). NECA is the "association" that was created pursuant to section 69.601(a) that is referenced in section 69.606(b) of our rules. *See* 47 C.F.R. §§ 69.601(a), 69.606(b).

[7] Letter from John A. Grieg, NECA Director - Tariff & Regulatory Matters, to the Chief, Common Carrier Bureau (dated October 1, 1986) at 1, 1-1, 1-17, E-2. The revisions to the average schedules (hereinafter " *1987 Revisions* ") were appended to Mr. Grieg's letter. NECA did not request before June 30, 1986,a waiver of the certification requirement of Section 69.606(b) of our rules. Neither has it requested here a waiver of that section in order to file those of its proposed revisions that are out of time (*i.e.*, those not concerning the restructuring of the line haul and special access compensation schedules). In this, as in previous NECA filings that fell within the ambit of section 69.606(b), we shall continue to make allowance for the unusual circumstances that have been present in the aftermath of the AT&T divestiture, and will accordingly continue to waive the application of that rule in this case. Moreover, a waiver is justified in this instance because our *Average Schedule Order* required that proposed revisions to the special access and line haul portions of the average schedules be filed in October 1986, and the represcription of the exchange carrier rate of return had not been completed by the June 30 date that is contained in section 69.606(b) of our rules. In the future, however, we expect NECA to comply with the requirements that are contained in section 69.606(b) of our rules by filing, in a timely manner, proposed revisions or the required certifications. If any biennial rate of return represcription is not completed by June 15, appropriate revisions to the average schedules to reflect represcribed rates of return should be filed not later than the date that NECA files its annual access charge revisions.

[8] *1987 Revisions* at 1-2 to 1-15, Appendix C.

[9] *See generally Average Schedule Order* at para. 10; *1987 Revisions* at B-2.

[10] The average schedules that are in effect were filed by NECA on September 17, 1985. Those schedules became effective June 1, 1986. *See Average Schedule Order* at paras. 4, 17. *See also Average Schedule Order Reconsideration* at paras. 37-40, 42-43.

[11] *1987 Revisions* at 1-16, 1-17, A-1 - A-5, E-2 - E-10. *See* Memorandum Opinion and Order, Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800 Phase III, FCC 86-354 (released Aug. 25, 1986) at para. 90.

[12] Memorandum Opinion and Order, MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, FCC 83-509 (released Nov. 14, 1983) at Appendix A, p. 9. Interstate and interstate settlements are separated jurisdictionally through the use of weighted messages. *1987 Revisions* at B-2.

[13] *1987 Revisions* at 1-2.

[14] *Id.* NECA states that its studies indicate that seventy-five percent of total line-haul costs are not distance sensitive. *See id.* at 1-2, 1-7.

[15] *Id.* at 1-2, 1-3. Under the proposed revisions, NDS compensation for each company would be based upon the number of switched interstate terminations times the average rate per termination (*i. e.*, the total NDS revenue requirement divided by total interstate switched terminations). *See* id. at 1-8, Appendix B, Table B6. DS compensation would be determined on the basis of the number of route miles and the number of interstate circuits within each circuit group. See id. at 1-8, 1-9, Appendix B, Section 5.

[16] 1987 Revisions at 1-12 to 1-14 and Appendices C, D.

[17] See id.

[18] Supplement at 1.

[19] Supplement to Appendix E, Part 3.

[20] 1987 Revisions at Appendix E, Supplement to Appendix E at 1.

[21] See generally 1987 Revisions at C-7.

[22] Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC, 737 F.2d 1095, 1127-29 (D.C. Cir. 1984).

[23] Average Schedule Order at para. 15, n.54.

[24] Id.

[25] See 1987 Revisions at B-20 to B-53.

[26] We also approve, for 1987, NECA's continued compensation arrangements for separate reimbursement items outside the average schedules. See supra note 4. We expect, however, that the next average schedule filing will include a complete, detailed description of all average schedule settlements.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

FAIRCHILD COMMUNICATIONS NETWORKS & SERVICES COMPANY — File No. I-T-C-87-017

Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Acquire and Operate Channels of Communications Between International Earth Stations in the United States and INTELSAT - Atlantic Ocean and Pacific Ocean Region Satellites at 4/16, 11/14 and 12/14 GHz for the Provision of INTELSAT International Business Services

MEMORANDUM OPINION, ORDER AND CERTIFICATE

Adopted: December 19, 1986 Released December 31, 1986

By the Common Carrier Bureau:

1. The Commission is considering an application filed on October 22, 1986, by Fairchild Communications Networks & Services Company (FCNS), requesting authority, pursuant to Section 214 of the Communications Act of 1934, to establish channels of communication between the U.S. and INTELSAT satellites for provision of INTELSAT Business Services (IBS). The application was placed on public notice on November 5, 1986. No comments were received.

2. FCNS requests the same blanket authority to provide IBS services that we have granted to other carriers.[1] In the alternative, if it is determined that such blanket authorization is not appropriate at this time, FCNS requests an authorization to acquire and operate one full duplex 192 kilobit per second ("kbps") satellite channel of communication between Trexlertown, Pennsylvania and the INTELSAT satellite located at 307' E.L. or its replacement. The satellite channel will be used to provide digital voice and slow speed data services to the United Kingdom for a specific customer.

3. FCNS has the requisite qualifications to provide IBS service to overseas points where IBS has been introduced. However, 19.9% of FCNS' stock is owned by a French corporation. Therefore, FCNS is a foreign-owned carrier within the definition of such as set forth in *International Competitive Carrier* policies, 102 FCC 2d 812 (1985), *recon denied*, Mimeo No. 36813, released August 7, 1986. Accordingly, FCNS must be treated as a dominant carrier under the Commission's *International Competitive Carrier* policy and may not be granted blanket authority to provide IBS services. Instead, it must seek Section 214 authority to provide IBS service on a country-by-country, circuit-by-circuit basis. FCNS may apply in one application to serve more than one country as long as it specifies the requested circuitry to each country. Here, FCNS has specified circuitry to begin service to the United Kingdom. We will grant FCNS's application to the extent that it requests IBS facilities for service to the U.K.

4. IT IS CERTIFIED that the present and future public convenience and necessity require the provision by FCNS of the IBS service to the United Kingdom.

5. Accordingly, IT IS ORDERED that application File No. I-T-C-87-017 IS GRANTED, in part, and FCNS is authorized to acquire and operate one full duplex 192 kilobit per second ("kbps") satellite channel of communication between Trexlertown, Pennsylvania and an appropriate INTELSAT satellite for provision of IBS and related digital video services between the U.S. and the United Kingdom.

6. The Section 214 authorization granted herein is effective on its release date of this order and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be fled, the authorization will continue in effect until Commission action on the application.

7. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of any necessary operating agreements between the applicant and its correspondents and copies of the agreements shall be filed with the Commission within 30 days of its execution.

8. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carries and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

9. FCNS shall file quarterly traffic and revenue reports on country-by-country basis within 90 days from the end of each calendar quarter.

10. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this orde (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

James L. Ball
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] Vitalink International Communications, Inc., Mimeo No. 687 (released November 7, 1984). See also, Communications Satellite Corporation, Mimeo No. 6564 (released September 14, 1984) and American Telephone and Telegraph Co. *et al.*, File Nos. I-T-C-85-035, et al., released March 18, 1985.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

IDB COMMUNICATIONS GROUP, INC.

Application for authority to establish channels of communication between the U.S. and INTELSAT Atlantic and Pacific satellites for provision of INTELSAT Business Services and International Television Service. File No. I-T-C-87-013

SATELLITE GATEWAY INTERNATIONAL, INC.

Application for authority to establish channels of communication between the U.S. and INTELSAT Pacific satellites for provision of INTELSAT Business Services and International Television Service. File No. I-T-C-87-015

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: December 19, 1986 Released December 31, 1986

By the Common Carrier Bureau:

1. The Commission is considering two applications, filed on October 21, 1986 by IDB Communications Group, Inc. (IDB) and Satellite Gateway International, Inc. (SGI), respectively, requesting authority, pursuant to Section 214 of the Communications Act of 1934, to establish and operate channels of communications between the U.S. and overseas points for provision of INTELSAT Business Services (IBS) and International Television Service. IDB requests authority to utilize INTELSAT Atlantic and Pacific satellites while SGI requests authority to utilize Pacific satellites only. The applicants state that they wish to use existing earth stations or construct new earth stations for which authority will be sought pursuant to Title III of the Communications Act. The applications were placed on public notice on October 29, 1986. No comments were received.

2. The applicants request the same blanket authority to provide IBS services and international television services as we have granted to other carriers.[1] A grant of blanket authority here would be consistent with the action that we took in those decisions and in the public interest. Both applicants have the requisite qualifications to provide IBS and international television services to overseas points where such services have been introduced.

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision by IDB and SGI of the IBS and television space segment between earth stations that are now or may be licensed to them in the future and appropriate INTELSAT satellites.

4. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-87-013 and I-T-C-87-015 ARE GRANTED, and IDB and SGI are authorized to establish channels of communication between U.S. earth stations and appropriate INTELSAT satellites for the provision of IBS and related digital video services and International Television Service between the U.S. and those countries that now or hereafter will be listed in Comsat's tariff provisions for the space segment component of IBS international or television service. Provided, however, that this blanket Section 214 authorization is without commitment as to the Commission's action on any IBS earth station Title III applications that the applicant may file in the future.

5. The Section 214 authorizations granted herein is effective on its release of this order and shall be continued year-to-year, unless the Commission notifies the applicants to the contrary and requires a new application to be filed. If the Commission requires new applications to be filed, the authorizations will continue in effect until Commission action on the applications.

6. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of any necessary operating agreements between the applicants and their correspondents and copies of the agreements shall be filed with the Commission within 30 days of its execution.

7. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

8. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

James L. Ball
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] For IBS services, see Vitalink International Communications, Inc., Mimeo No. 687 (released November 7, 1984). See also, Communications Satellite Corporation, Mimeo No. 6564 (released September 14, 1984), and American Telephone and Telegraph Co., *et al.*, (File Nos. I-T-C-85-035, *et* al), Mimeo No. 3220 (released March 18, 1985) for international television services, see AT&T et al., 18 FCC 2d 402 (1969), and ITTWC et al., 76 FCC 2d 26 (1980).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN
TELEPHONE AND
TELEGRAPH CO. File No. I-T-C-87-010

Application for authority to lease and operate satellite circuits for service to Europe, the Middle East and Africa

ORDER AND AUTHORIZATION

Adopted: December 19, 1986 Released: December 31, 1986

By the Common Carrier Bureau:

1. The captioned uncontested application, filed on October 9, 1986, by American Telephone and Telegraph Co. (AT&T), requests authority for continuation of authority expiring on December 31, 1986 to acquire and operate satellite circuits for service to points in Europe, the Middle East and Africa which are not members of CEPT (the conference of 26 European Post/Telecommunications Administrations). AT&T states that traffic demands are such that no additional circuits will be necessary in 1987.[1] The Commission's Order and Authorization released December 31, 1985 (File No. I-T-C-86-018) extended AT&T's authority which will expire on December 31, 1986. The Commission's Order, Authorization and Certificate, released January 10, 1986 (File No. I-T-C-86-027) granted authority to AT&T to serve Gibraltar and AT&T requests that such authority be incorporated herein. Upon consideration of the application, we find that authorization of the requested facilities and services is required by the public convenience and necessity.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-86-010 IS GRANTED, and AT&T's authority to acquire and operate satellite facilities for service to Europe, the Middle East and Africa (non-CEPT points including Gibraltar) is extended until December 31, 1987.

3. All other terms and conditions of the Commission's Order and Authorization released December 7, 1982, File No. I-P-C-82-045, remain the same.

4. The Commission's orders, cited in paragraph 1 above, are hereby superseded.

5. AT&T shall file an application for satellite circuits for service to Europe, the Middle East and Africa on or before November 1, 1987.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

James L. Ball
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] The Commission's Order and Authorization released December 7, 1982 (File No. I-P-C-82-045) granted AT&T authority to lease and operate satellite circuits to non-CEPT countries for 1983, 1984, and 1985. This order was extended in the Order sought to be extended herein.

INDEX

Page

000.000 NECA revisions of averge schedule 1363
001.106 Petitions for reconsideration, denied 1267
001.786 Monthly financial reports 1349
002.106 Table of Frequency Allocation 1276
001.229 Motion to enlarge issues, denied 1267
022.901 Eligibility 1272
022.901 Eligibility 1311
022.903(d) Major amendments 1280
022.905 Technical qualifications 1278
022.913 Content of amendments* 1280
022.917 Financial information required in amendments* 1280
022.917(b) Financial qualifications 1278
043.31 Monthly reports of communication common carriers 1349
063.01 Contents of Applications 1309
063.01 Contents of Applications 1310
063.01 Contents of Applications 1366
063.01 Contents of Applications 1367
063.01 Contents of Applications 1368
063.69 Contents of Appls. to close or reduce hrs. of service 1362
064.702 Furnishing of Enhanced Services and Customer-Premise 1272
066.11 Contents of application 1271
066.12 Supporting data and exhibits required with applicatio 1271
067.313 Test desk work - account 603 1287
067.122 Categories of Outside Plant 1287
067.124 Exchange outside plant categories and apportionment 1287
067.126 Host/remove message outside plant category and appor 1287
067.151 Station Equipment - General 1287
073.1940 Broadcasts by Candiates for Public Office 1305
073.202 FM Table of Allotments 1269
073.202 FM Table of Allotments 1296
073.202 FM Table of Allotments 1297
073.202 FM Table of Allotments 1298
073.202 FM Table of Allotments 1300
073.202 FM Table of Allotments 1303
073.202 FM Table of Allotments 1304
073.202 FM Table of Allotments 1330
073.202 FM Table of Allotments 1332
073.202 FM Table of Allotments 1336
073.202 FM Table of Allotments 1340
073.202 FM Table of Allotments 1342
073.202 FM Table of Allotments 1346
073.202 FM Table of Allotments 1354
073.202 FM Table of Allotments 1356
073.202 FM Table of Allotments 1358
073.202(b), Table of Allotments 1334
073.202, FM Table of Allotments 1285
073.202, FM Table of Allotments 1321
073.202, FM Table of Allotments 1326
073.202, FM Table of Allotments 1328
073.202, Table of Allotments 1324

073.3525 Agreements for Removing Application Conflicts 1352
073.4140 Minority Ownership; tax certificates and distress 1315
073.504 FM Table of Allotments 1344
073.606 TV Table of Assignments 1338
080.1 Marine Subsidiary Service 1312
097.25, Examination credit 1286
097.28, Examination administration 1286
300.214 Extension of Lines 1309
300.214 Extension of Lines 1310
300.214 Extension of Lines 1362
300.214 Extension of Lines 1366
300.214 Extension of Lines 1367
300.214 Extension of Lines 1368
300.309 Action Upon Appls., Form of Conditions Attached to L 1360
300.312 Administrative sanctions 1305
300.319 Construction Permits 1360
500.3200 Reopening of record, denied 1267

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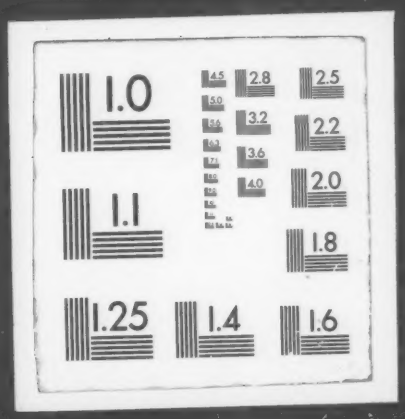
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